UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1995/20
26 June 1995

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Subcommission on Prevention of
Discrimination and Protection
of Minorities
Forty-seventh session
Item 10 (a) of the provisional agenda

# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES: QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

## Eighth annual report and list of States which, since 1 January 1985 have proclaimed, extended or terminated a state of emergency, presented by Mr. Leandro Despouy, Special Rapporteur appointed pursuant to Economic and Social Council resolution 1985/37

CONTENTS

| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 9 | 3 |
| Chapter | | |
| I. GENERAL REMARKS ON STATES OF EMERGENCY | 10 - 16 | 5 |
| A. Assessment of the number of states of emergency and the frequency with which States introduce emergency measures | 10 - 12 | 5 |
| B. The impact of states of emergency on institutions and human rights | 13 - 14 | 5 |
| C. Current trends in this area | 15 - 16 | 6 |

CONTENTS (continued)


| | | Paragraphs | Page |
|---|---|---|---|
| II. | NON-DEROGABLE HUMAN RIGHTS | 17 - 32 | 9 |
| | A. Expansion of non-derogable core rights | 21 - 30 | 9 |
| | B. Recommendations | 31 - 32 | 11 |
| III. | DATABASE ON STATES OF EMERGENCY | 33 - 40 | 13 |
| IV. | LIST OF STATES WHICH, SINCE 1 JANUARY 1985, HAVE PROCLAIMED, EXTENDED OR TERMINATED A STATE OF EMERGENCY | 41 - 47 | 15 |
| V. | OTHER OBSERVATIONS AND COMMENTS | 48 - 52 | 41 |

Annexes

| | | |
|---|---|---|
| I. | Report of the meeting of experts on non-derogable rights | 44 |
| II. | List of replies and other communications received | 63 |
| III. | List of specialized publications received from Amnesty International | 64 |

## Introduction

1. By resolution 10 (XXX) of 31 August 1977, the Subcommission on Prevention of Discrimination and Protection of Minorities expressed its concern at the manner in which certain countries applied the provisions relating to situations known as states of siege or emergency. Convinced that a connection existed between such application and the situation regarding human rights in the said countries, it considered that a comprehensive study of the implications for human rights of recent developments in that sphere would be conducive to the achievement of the aims pursued by the United Nations in the field of human rights. The comprehensive study was presented by Ms. Nicole Questiaux at the thirty-fifth session of the Subcommission (E/CN.4/Sub.2/1982/15).

2. In resolution 1983/18, the Commission on Human Rights requested the Subcommission to propose for the Commission's consideration measures designed to ensure the respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency existed, especially respect for those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights.

3. By resolution 1983/30, the Subcommission decided to include in its agenda an item entitled "Implementation of the right of derogation provided for under article 4 of the International Covenant on Civil and Political Rights and violations of human rights". Subsequently, by its resolution 1987/25, the Subcommission decided to examine this issue, as a matter of high priority, under the agenda item "The administration of justice and the human rights of detainees: (b) Question of human rights and states of emergency".

4. At the Subcommission's request, the Economic and Social Council, by resolution 1985/37, authorized the Subcommission to appoint a special rapporteur to carry out the work referred to in Commission resolution 1983/18 and Subcommission resolution 1983/30.

5. The mandate of the Special Rapporteur for that task, Mr. Leandro Despouy, as laid down in these resolutions as well as in subsequent Subcommission resolutions 1985/32, 1987/25, 1988/24, 1989/28, 1990/19, 1991/18, 1992/22, 1993/28 and 1994/36 includes the following main tasks: (a) to draw up and update annually a list of countries which proclaim or terminate a state of emergency; (b) to examine, in annual reports, questions of compliance by States with internal and international rules guaranteeing the legality of the introduction of a state of emergency; (c) to study the impact of emergency measures on human rights; (d) to recommend concrete measures with a view to guaranteeing respect for human rights in situations of state of siege or emergency.

6. The Special Rapporteur has presented to the Subcommission and to the Commission on Human Rights an explanatory paper (E/CN.4/Sub.2/1985/19) and his first, second, third, fourth, fifth, sixth and seventh reports and lists of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, including the revised and updated versions of those reports (E/CN.4/Sub.2/1987/19/Rev.1 and Add.1-2; E/CN.4/Sub.2/1988/18/Rev.1; E/CN.4/Sub.2/1989/30/Rev.2; E/CN.4/Sub.2/1991/28/Rev.1; E/CN.4/Sub.2/1992/23/Rev.1; E/CN.4/Sub.2/1993/23/Rev.1; E/CN.4/Sub.2/1994/23 and Corr.1 and Add.1).

7. Pursuant to the request contained in decision 1991/262 of the Economic and Social Council, the Special Rapporteur presented to the Subcommission and to the Commission on Human Rights the draft guidelines for the development of legislation on states of emergency, which were continued in annex I to his fourth annual report (E/CN.4/Sub.2/1991/28/Rev.1).

8. By its resolution 1995/42, the Commission on Human Rights, taking note of Subcommission resolution 1994/36, recommended to the Economic and Social Council to approve the request by the Subcommission to Mr. Leandro Despouy, Special Rapporteur on human rights and states of emergency, to fulfil his mandate, notably relating to the holding of an expert meeting (i) to study non-derogable rights in states or situations of emergency and the international principles to be taken into account in drafting national legal rules, and (ii) to establish a database on states of emergency and related human rights questions.

9. The present eighth annual report has been prepared in pursuance of that as well as of other pertinent resolutions and decisions of the Commission on Human Rights and the Subcommission.

# I. GENERAL REMARKS ON STATES OF EMERGENCY

## A. Assessment of the number of states of emergency and the frequency with which States introduce emergency measures

10. On the basis of the successive reports submitted by the Special Rapporteur between January 1985 and May 1995, it is to be noted that some 90 States have experienced either de facto or de jure states of emergency during that period. The fact that during the same period many of them extended emergency measures or reintroduced them after having lifted them means that in only one decade a state of emergency was proclaimed, extended or maintained in one form or another in at least 200 States and territories, whereas it was lifted in only 60 cases.

11. If the list of countries that have proclaimed, extended or lifted a state of emergency during the past 10 years, as reflected in the present report, were transposed onto a world map it would be disturbing to note that it would cover almost three quarters of the Earth's surface, and that no region would be left out. It would also be observed that in countries so geographically distant, and with such dissimilar legal systems, as the United States and China, or which are as far apart as the Russian Federation and Argentina, and in regions of intense conflict such as the Middle East, the former Yugoslavia and some African countries, Governments have without exception opted to apply either de facto or de jure emergency measures in response to the crises facing them.

12. A political interpretation of this original legal world map would lead to the conclusion that mankind is not yet mature enough to enjoy stability and that there is a perilous worldwide tendency for the exception to become the rule.

## B. The impact of states of emergency on institutions and human rights

13. Broadly speaking, the most significant conclusions to be drawn from the successive reports submitted by the Special Rapporteur are as follows:

(a) Under states of emergency that have been lawfully proclaimed, i.e. those that are in conformity with the relevant domestic and international norms, national institutions do not suffer unduly and the emergency measures are applied only for a limited period. In these cases, the rights most commonly suspended by Governments are linked to individual freedoms, and range from limitations on freedom of movement to administrative arrest. The restrictions frequently also encompass freedom of expression and assembly.

(b) In contrast, when states of emergency diverge from the relevant legal norms, there is a general tendency to perpetuate and concentrate excessive and arbitrary authority in the hands of the executive branch. Changes affecting institutions that generally occur in these circumstances

concern parliaments, whose legislative authority is restricted or which are even dissolved, with many of their members being detained or prosecuted (see E/CN.4/Sub.2/1988/18/Rev.1, para. 71 and E/CN.4/Sub.2/1993/23/Rev.1, paras. 47-48). A similar phenomenon seems to affect the judiciary, in respect of which, according to the Special Rapporteur of the Commission on Human Rights on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, "decrees instituting states of emergency are often followed by mass dismissals of judges, the creation of special courts and the restriction or suspension of the judicial review function". He also refers to another commentator's statement that "the emasculation of the judiciary and the harassment of defence lawyers are not uncommon in a state of emergency" (E/CN.4/1995/39, para. 59).

14. Frequently, when states of emergency are marked by such anomalies or departures from the norm, it has been noted that human rights as a whole suffer, including those which have not been formally suspended. It has also been found that it is in such situations that inalienable rights are most frequently infringed - in particular the right to life and to physical integrity - and that a pattern of gross and systematic human rights violations occur in the largest number of countries. 1/

## C. Current trends in this area

15. In addition to the observations made above, which point to the scale of the problem and to the frequency with which this extreme legal measure is resorted to, as well as to the serious consequences which its abuse entails for human rights as a whole - and in particular for what are known as inalienable rights - it is important to highlight a number of negative and positive trends currently occurring.

### Negative trends

(i) The perilous distortion of or deviation from the rule of law that ensues from the implementation of emergency measures under ordinary legislation, without recourse to a formal declaration of a state of emergency, which was described by the Special Rapporteur in his seventh report to the Commission and to the Subcommission (E/CN.4/Sub.2/1994/23, paras. 39-41) as follows:

> "Such a misuse of law, which is daily becoming more frequent, even in countries with a long-standing democratic tradition, is particularly serious when it takes the form of criminal laws or procedures applicable under normal circumstances. The most common spheres of such legislation are State security (and more particularly anti-terrorist legislation), the campaign against drug trafficking, provisional arrest, occasionally questions relating to publications, and quite recently, questions of immigration.

"A particularly disturbing development is that these laws introduce, under normal circumstances, restrictions on rights which may be suspended only during formally declared states of emergency. What is more, the ordinary legislation in question occasionally affects even inalienable rights from which no derogation is possible, even under exceptional circumstances.

"To consider this issue in depth, the Special Rapporteur appeals in particular to the Working Group on Arbitrary Detention and to the various thematic rapporteurs, especially the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on xenophobia."

(ii) Another negative trend is the persistence of immunity from prosecution for the perpetrators of human rights violations which characterizes such situations, and which persists even after the state of emergency has been lifted and even when the country has returned to normal. Frequently, in many countries that have experienced long periods during which their institutions have operated under a state of emergency and there have been gross and systematic human rights violations, Governments adopt measures of clemency or amnesty laws, on the grounds of realpolitik or national reconciliation. A number of non-governmental organizations have expressed deep concern to the Special Rapporteur about such situations, as they represent a dangerous trend that facilitates or encourages future violations.

Positive trends

(i) The marked progress made by the domestic legislation of many countries, and in particular the growing recognition of the competence of the courts to monitor the lawfulness of the proclamation of a state of emergency or, in specific cases, to terminate arbitrary measures;

(ii) Consolidation of the tendency to compensate the victims of human rights violations that occur under a state of emergency, even when Governments have decided not to institute criminal proceedings against the perpetrators of the violations in question;

(iii) The progress made in drawing up the draft code of crimes against the peace and security of mankind, and the establishment of the International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 are indications of the international community's determination to set up machinery to punish gross and large-scale violations of human rights, even in the most extreme circumstances;

(iv) The fact that a number of Governments, and in particular those that are in a process of transition, request the advisory services of the Centre for Human Rights in order to assist them in reforming their domestic human rights legislation is an extremely encouraging development that should be highlighted and supported. The countries that have requested such advisory services include Romania and Cambodia. The Special Rapporteur has also had the opportunity to cooperate with the Governments of Paraguay, Colombia and the Russian Federation.

16. Another important development in recent years has been the strengthening and expansion of the core rights from which no derogation is possible under article 4, paragraph 2, of the International Covenant on Civil and Political Rights. This issue will be explored at length in chapter II of the present report.

## II. NON-DEROGABLE HUMAN RIGHTS

17. Since the mandate of the Special Rapporteur was established in 1985, the Commission and the Subcommission have requested him to examine in depth the consequences for human rights of measures adopted under states of emergency, and in particular for inalienable or non-derogable rights.

18. The successive resolutions extending the Special Rapporteur's mandate have reiterated this request, and invited him to carry out an in-depth study of the issue and to submit specific recommendations to the Commission and Subcommission regarding measures to enhance the protection of such rights under states of emergency.

19. The Commission and the Subcommission appreciate the difficulties this task involves and the legal disputes that may arise from an examination of the various international norms that ensure the inalienability of certain rights; accordingly, they supported the initiative taken by the Special Rapporteur to involve other international experts in the exercise. There were two such encounters, the first of them, a preliminary meeting, in May 1994, 2/ and the second in May 1995, at which it was possible to reach fuller conclusions which are described by the Special Rapporteur below.

20. The second meeting of experts on non-derogable rights in states or situations of emergency was held at the Palais des Nations at Geneva from 17 to 19 May 1995. The meeting was organized by the Association of International Consultants on Human Rights (CID) in cooperation with the Centre for Human Rights, with financial support from the Governments of Greece, Norway, Sweden and Switzerland and from the European Commission. The meeting was attended by experts in various branches of international law and specialists in the various regional mechanisms for the protection of human rights. The report of this meeting is contained in annex I to the present report. The papers presented at the meeting by the experts will be published by CID.

### A. Expansion of non-derogable core rights

21. The most significant outcome of this meeting of experts was undoubtedly its confirmation of the growing trend towards the strengthening and expansion of non-derogable core rights. In the view of the Special Rapporteur, this positive development reflects the growing realization that, however serious an emergency may be, nothing can justify any infringement of certain human rights. It also stresses that the ultimate justification for suspending certain rights in specific circumstances is precisely the need to preserve the most fundamental rights. 3/

22. The factors that have helped to strengthen and develop the non-derogable core rights provided for by article 4, paragraph 2, of the International Covenant on Civil and Political Rights are many and varied. The important feature is that this dual phenomenon - the strengthening and expansion of inalienable rights - is not only discernible within the sphere of international human rights law, but also in other spheres of international law. This accounts for the value and necessity of examining the evolution that has taken place within international positive law as a whole.

23. First of all, the non-derogable character of the rights provided for in article 4 of the International Covenant has been strengthened and extended to other rights by the entry into force of other international human rights treaties. Thus, for example, article 2, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment strengthens the inalienable nature of the right to physical, mental and moral integrity, by prohibiting torture, even in exceptional circumstances such as a state of war or any other public emergency. In turn, the American Convention on Human Rights enhances the non-derogable character of the rights provided for by the Covenant and extends it to other rights such as the rights of the child and the family, the right to nationality and political rights.

24. Secondly, the precedents and case-law of the treaty-monitoring bodies themselves have expanded the non-derogable core rights, by establishing the inalienable nature of other rights and guarantees that are not explicitly recognized as such by the articles of the conventions.

25. This extensive interpretation has been adopted in Europe and in the Americas. An illustration of this is provided by Advisory Opinion No. 8 of the Inter-American Court of Human Rights which recognizes the inalienable nature not only of the rights set out in article 27, paragraph 2, of the American Convention, but also of the procedural guarantees (in particular the remedy of habeas corpus) which are essential to protect the rights in question.

26. Similarly, the trend of the precedents established by the Human Rights Committee is towards a consolidation of the inalienable nature of other rights that are not covered by article 4. This is the case, in particular, of article 9, paragraphs 3 and 4 (concerning the remedy of habeas corpus or amparo), and of certain provisions of article 14, which establishes the right to a fair trial.

27. An important issue which aroused great interest at the meeting of experts was the question of the suspension of the rights recognized by a number of international treaties that contain no specific provision in that respect. This is the case of the International Covenant on Economic, Social and Cultural Rights, of the Convention on the Rights of the Child and, in the regional sphere, of the African Charter on Human and Peoples' Rights. Beyond the legal debates to which it gave rise, it is important to highlight the inherently inalienable nature of the norms contained in the Convention on the Rights of the Child. The inalienable nature of the rights conferred on children by the "right to special protection" or those covered by "the best interests of the child" is strengthened by the existence of a range of international norms that vest them with inalienability. The same reasoning should be applied to the prohibition on the application of the death penalty to young people under 18 years of age which, in addition to being expressly established by the Convention, is to be interpreted as a norm of customary international law.

28. Moreover, it is important to stress that there has been a similar trend beyond the boundaries of international human rights law. Such is, for example, the case of international humanitarian law, which provides protection

for a large number of fundamental rights and prohibits the suspension of any of its prescriptions under states of emergency, precisely because it is intended to apply in exceptional circumstances.

29. Initially, international humanitarian law applied solely to international armed conflicts, but it was subsequently extended to domestic armed conflicts, leading, especially with regard to inalienable core rights, to mutual enhancement of both branches of international law.

30. As will be seen below, the conclusions of the meeting of experts also emphasized the non-derogable nature of the right to self-determination, certain norms protecting persons belonging to a minority, the valuable precedents established within the framework of ILO regarding the suspension of the international labour conventions, and the case-law of the International Court of Justice, which on several occasions has established the non-derogable nature of certain rights in conformity with international customary law.

## B. Recommendations

31. Considering that the successive reports submitted by the Special Rapporteur highlight the following: (a) the notorious frequency with which Governments resort to states of emergency; (b) the limited impact of states of emergency upon human rights and fundamental freedoms when they are implemented in conformity with the relevant requirements of domestic and international law; and (c) the harmful consequences of states of emergency upon human rights as a whole, and in particular non-derogable rights, when they are applied unlawfully or improperly; considering also that: (a) the Commission on Human Rights, when it established the mandate of the Special Rapporteur, requested the Subcommission to propose "measures designed to ensure the respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency exist, especially of those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights"; and (b) that after 10 years of continuous activity, the Special Rapporteur believes that it is opportune to make a number of substantive recommendations to the Commission, through the Subcommission, concerning future handling of this issue; taking into account, finally: (a) that the various studies made by both Special Rapporteurs, first of all, Mrs. Nicole Questiaux and subsequently the present Special Rapporteur, highlight the need to strengthen the machinery for the promotion and protection of human rights in states of emergency; (b) that the task performed by the Special Rapporteur is, in many cases, closely linked to that of other special rapporteurs and working groups of the Commission; (c) that the World Conference on Human Rights, held at Vienna in April 1993, established as one of its highest priorities the achievement of greater complementarity and harmonization among the various organs responsible for promoting and protecting human rights; and (d) the interest shown by Governments and the cooperation they have provided to the Special Rapporteur during his 10 years of activity, the Special Rapporteur suggests that the Subcommission should make the following recommendations to the Commission:

(i) Firstly, the Commission should consider the possibility of including consideration of this issue as a sub-item on its agenda which could be entitled "Protection of human rights in states of emergency";

(ii) Secondly, the Commission should consider the possibility of establishing a special procedure, involving the setting up of a working group or the appointment of a special rapporteur, whose mandate, in the light of the previous reports, could encompass both the preparation of an annual list of States that have proclaimed, extended or lifted a state of emergency, and authority to examine the lawfulness of the measures adopted in such circumstances, as well as their impact on human rights and fundamental freedoms as a whole, with particular attention to rights which are non-derogable, even in states of emergency;

(iii) Lastly, and in the spirit of the decisions of the Vienna World Conference concerning the complementarity and harmonization of work by the various human rights bodies, it would be appropriate for the Commission to draw the attention of the Human Rights Committee to the importance and value of a new general comment by the Committee on article 4 of the International Covenant on Civil and Political Rights, paragraph 2 of which concerns non-derogable rights.

32. This latter request is justified by the fact that the general comments are a long-standing and most valuable feature of the Committee's work, and that the only such comment concerning article 4 dates back to 1981. As has been observed, since then there has been considerable progress in international monitoring of the measures adopted under states of emergency. In addition, the successive precedents established by the Committee, prescribing the inalienable nature of certain rights which are not classified as such by article 4, paragraph 2, of the International Covenant, confirm this overall trend in international law and demonstrate the value of systematizing it.

## III. DATABASE ON STATES OF EMERGENCY

33. In paragraph 9 of its resolution 1994/36, the Subcommission took note of the consultations with institutions and experts already held by the Special Rapporteur in implementation of its resolution 1993/28 on the subject of receiving, storing and retrieving information, through a databank, on states of emergency and related human rights questions, and invited him to pursue and broaden such consultations in early 1995 so as to report on the results at its forty-seventh session.

34. In its resolution 1995/42, the Commission on Human Rights, endorsing Subcommission resolution 1994/36, recommended that the Economic and Social Council approve the request of the Subcommission to the Special Rapporteur on human rights and states of emergency to fulfil his mandate, notably relating to the holding of an expert meeting, inter alia to establish a database on states of emergency and related human rights questions.

35. For reasons beyond his control, the Special Rapporteur was unable to organize the third expert meeting on the question of a database on states of emergency. 4/ However, it is his strong belief that further efforts should be made to establish such a database. The Special Rapporteur has repeatedly emphasized the importance and necessity of the collection of accurate data on various issues relating to states of emergency, and encouraged the development of a computerized database to assist him and the Centre for Human Rights in monitoring State actions.

36. The Special Rapporteur would refer in this connection to the Queen's University of Belfast (QUB) database on states of emergency which has been developed with the assistance of the Centre for Human Rights and others to meet this need. The initial version for use in personal computers on floppy discs was launched in 1992. In 1994, the initial 10 country entries were made available on the Internet system, and a further four or six entries are in preparation.

37. The Special Rapporteur is aware of some drawbacks which have emerged during the development and testing of these entries. First, there was a difficulty in deciding what national legislation and case law to include, since "emergency" legislation is often mingled with "ordinary" legislation. There has also been a problem of duplication of efforts with other human rights database projects, notably the database on case law under the European Convention developed by the Council of Europe and the Netherlands Human Rights Institute (SIM). There is also a similar proposal for the development of a worldwide database from a group in the United States of America (DIANA).

38. The Special Rapporteur was informed that at a recent meeting in Paris, on 17 May 1995, organized on behalf of the DIANA group by SIM, it was agreed by all those involved that their work should be coordinated, initially on a European basis, and that a joint application for funding of the project should be made to the European Commission and others.

39. The initial objective would be to create a general European human rights database. Initially this will include the full text of all relevant Council of Europe Conventions, a full compilation of all decisions by the European Commission and Court on Human Rights, the full text of all reservations and derogations by individual countries, and the essential national law on the declaration of emergencies. Further national legislation on active human rights concerns will be added later.

40. It was also agreed that the responsibility for the database would be shared between the agencies involved; the Council of Europe will supply basic texts in electronic form, the work of indexing and structuring will be centred at SIM and the work of collecting national legislation and providing the initial site on Internet will be centred in Belfast. Other agencies will be encouraged to join in the work on a cumulative basis.

## IV. LIST OF STATES WHICH, SINCE 1 JANUARY 1985, HAVE PROCLAIMED, EXTENDED OR TERMINATED A STATE OF EMERGENCY

41. By drawing up this list of States which have proclaimed, extended or terminated a state of emergency, the Special Rapporteur has endeavoured, within the limits of the information available to him, to give the Subcommission and the Commission as complete a picture as possible of the world situation regarding states of emergency since 1 January 1985. The present composite list contains a summary of information which had already been included in his seven previous reports as well as new information received from Governments, United Nations bodies and other intergovernmental organizations, communicated by non-governmental organizations in consultative status with the Economic and Social Council and published in the press since December 1994, when his seventh report and the addendum thereto was issued. 5/

42. The purpose of this recapitulation is to give an overall view of the world situation regarding states of emergency and at the same time to improve the list prepared by the Special Rapporteur. To that end, it is essential to benefit once more from the cooperation of the Governments concerned, the non-governmental organizations and all those in a position to supply reliable information capable of correcting errors or remedying gaps which may exist in that list.

43. The Special Rapporteur periodically solicits information from all Governments, competent United Nations organs, specialized agencies and other intergovernmental and non-governmental organizations concerned. A list of replies and other communications received is contained in annex II.

44. Whenever the Special Rapporteur has learned, generally through the international press, of the adoption by a Government of emergency measures involving prima facie restriction of the exercise of human rights (partial suspension of the Constitution, curfew, etc.) he has immediately addressed that Government, through the Secretary-General, requesting specific and detailed information on the nature of the measures in force, the legal basis for them and, above all, the effect they are having or have had on human rights in general.

45. In drawing up this list, the Special Rapporteur also took into account those countries which have and apply ordinary legislation empowering the executive to adopt emergency measures (such as administrative or ministerial detention for long periods) without the need for official proclamation of a state of emergency in order to do so.

46. According to the information available to the Special Rapporteur, in the following 87 States and territories, since 1 January 1985, measures have been taken which constituted the proclamation, extension, maintenance or termination of emergency regimes in various forms:

Afghanistan: State of emergency proclaimed on 19 February 1989. Lifted on 28 May 1990.

Sources: Interim reports on the situation of human rights in Afghanistan, prepared by Mr. F. Ermacora, Special Rapporteur of the Commission on Human Rights (A/44/669, para. 20 (e), and A/45/664, para. 36).

Algeria:* State of siege proclaimed on 6 October 1988. Terminated on 12 October 1988.

State of siege decreed on 4 June 1991 for a period of four months. Terminated on 29 September 1991.

Sources: Letter from the Government dated 28 April 1989; Notifications of the Government to the United Nations Secretary-General dated 19 June and 3 October 1991.

State of emergency proclaimed on 9 February 1992 for a duration of 12 months. Indefinite overnight curfew decreed on 2 December 1992.

On 7 February 1993, the state of emergency was extended indefinitely.

Sources: Notification of the Government to the United Nations Secretary-General dated 13 February 1992; information published in the press and received from non-governmental organizations.

Argentina: State of siege proclaimed on 25 October 1985 for 60 days. Terminated on 7 December 1985.

Sources: Letter from the Government dated 12 August 1987.

State of siege proclaimed on 29 May 1989 for 30 days. Lifted on 27 June 1989.

Sources: Notifications of the Government to the United Nations Secretary-General dated 7 June 1989 and 11 July 1989.

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* An asterisk accompanying the name of a country or a territory indicates that the state of emergency there is still in force.

Armenia: On 15 January 1990, a state of emergency was introduced in the Gorissa region of the Armenian SSR.

Sources: Notification of the Government of the Soviet Union to the United Nations Secretary-General dated 16 January 1990.

On 29 August 1990, a state of emergency was declared and a curfew introduced throughout the republic. Lifted on 16 August 1991.

On 16 December 1991, a state of emergency was declared and a curfew introduced in the Meghri region of Armenia for a period of three months.

On 19 June 1992, the state of emergency in the Meghri and Kapan regions of southern Armenia was reinstated for another three months.

Sources: Letter from the Government dated 10 July 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information received from a non-governmental organization and published in the press.

In February 1993, a state of emergency was introduced in Armavir district of Armenia for a period of one month.

Sources: Information published in the press.

Azerbaijan:* State of emergency imposed in the Nagorno-Karabakh autonomous region and Agdam district of the Azerbaijan SSR as of 21 September 1988. On 15 January 1990, a state of emergency was introduced in the territory of the Nagorno-Karabakh autonomous region, the regions of the Azerbaijan SSR adjacent thereto, and the border zone along the state frontier with the Soviet Union in the territory of the Azerbaijan SSR.

On 20 January 1990, a state of emergency was declared in the city of Baku. Lifted in August 1991.

In June 1990, a state of emergency was introduced in the Azerbaijan SSR along its border with the Armenian SSR.

Sources: Notifications of the Government of the Soviet Union to the United Nations Secretary-General dated 13 October 1988, 15 and 29 January 1990; information published in the press.

On 14 May 1992, a state of emergency was decreed for a period of two months and a curfew introduced in the city of Baku.

Sources: Information published in the press. In a letter dated 19 May 1992, addressed to the Government of the Azerbaijan Republic, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

In March 1993, a state of emergency was declared in three districts of the Republic for a period of one month.

On 3 April 1993, a state of emergency was introduced in the whole territory of the Republic for a period of 60 days.

On 9 April 1993, a curfew was imposed in Baku and several other cities and districts.

On 2 August 1993, the state of emergency was extended for another 60 days.

On 22 September 1993, the state of emergency was lifted throughout the country.

Sources: Notifications of the Government to the United Nations Secretary-General dated 16 April and 13 August 1993; communication of the Government to the secretariat of the Conference on Security and Cooperation in Europe dated 11 August 1993; report of the Azerbaijan to the Human Rights Committee (CCPR/C/81/Add.2, paras. 22-24); information published in the press.

On 4 October 1994, a state of emergency was introduced in the city of Baku for a period of 60 days. Subsequently extended (most recently from 3 April 1995 for another 60 days).

Sources: Notification of the Government to the Secretary-General of the United Nations dated 5 October and 13 December 1994 and 8 April 1995.

On 11 October 1994, a state of emergency was introduced in the town of Guyandja. On 11 December 1994, the state of emergency was extended for another 60 days. Terminated on 11 April 1995.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 21 October and 17 December 1994 and 17 April 1995.

Bangladesh: Martial law proclaimed on 24 March 1982. Terminated on 10 November 1986.

State of emergency declared on 27 November 1990. Lifted on 6 December 1990.

Sources: Letters from the Government dated 22 July 1987 and 1 April 1993.

Bolivia:* State of emergency proclaimed on 18 September 1985. Terminated on 19 December 1985.

State of emergency proclaimed on 27 August 1986. Terminated on 27 November 1986.

State of emergency proclaimed on 15 November 1989. Terminated on 15 February 1990.

Sources: Notifications of the Government to the United Nations Secretary-General dated 27 September and 29 October 1985, 6 January, 28 August and 28 November 1986, 16 November and 8 December 1989 and 18 March 1990.

State of emergency decreed on 18 April 1995 in the whole territory of the country.

Sources: Notification of the Government to the Secretary-General of the United Nations dated 19 April 1995; letter from the Government dated 5 May 1995, received in reply to the Special Rapporteur's request for information of 24 April 1995; information published in the press.

Bosnia and Herzegovina:* Admitted to the United Nations on 22 May 1992, this newly emerged State found itself in a de facto state of emergency at the moment of its transition to independence. The Special Rapporteur awaits more precise information to be submitted by the Government.

Sources: Periodic reports on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. T. Mazowiecki, Special Rapporteur of the Commission on Human Rights (latest: E/CN.4/1995/4; E/CN.4/1995/10; E/CN.4/1995/57, paras. 5-50); information published in the press.

Brunei Darussalam:* State of emergency proclaimed on 12 December 1962. Still in force.

Sources: Letters from the Government, the latest dated 4 April 1991.

Burkina Faso: Succession of emergency regimes and situations comparable to states of emergency since November 1980 and until June 1991.

Sources: Letters from the Government dated 30 April 1991 and 10 June 1993.

Burundi:* State of emergency proclaimed and a curfew imposed on 21 October 1993. The curfew was lifted on 26 October 1993.

Sources: Report of the Representative of the Secretary-General, Mr. F.M. Deng, on internally displaced persons (E/CN.4/1995/50/Add.2, para. 31); information published in the press. In a letter dated 25 October 1993, addressed to the Government of Burundi, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Cameroon: State of emergency proclaimed on 18 April 1984. Lifted on 19 December 1991.

Sources: Information received from non-governmental organizations.

A state of emergency was in force from 27 October to 29 December 1992 in the North-West province of the country.

Sources: Letter from the Government dated 29 December 1992; Report of the Human Rights Committee (A/49/40, para. 189).

Canada: State of emergency declared on 23 July 1989 throughout the province of Manitoba. Terminated on 4 August 1989.

Source: Letter from the Government dated 24 August 1989.

Chad: No state of emergency has been formally proclaimed since 1 January 1985. However, a decree dated 7 April 1988 restricted for one week the realization of some human rights and fundamental freedoms.

Sources: Letters from the Government dated 20 July 1988 and 5 February 1991.

Curfew imposed in N'Djamena on 9 August 1993. On 22 October 1993, a curfew was introduced in the whole territory of the country. Lifted on 23 October 1993.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Chile: Proclamation of state of siege (from 7 November 1984 to 17 June 1985 and from 8 September 1986 to 5 January 1987), state of emergency (from 24 March 1984 to 27 August 1988) and state of danger of disturbance of internal peace (from 11 March 1981 to 27 August 1988).

Sources: Notifications of the Government to the United Nations Secretary-General dated, inter alia, 17 June 1985, 22 September 1986, 20 January 1987 and 31 August 1988; letters from the Government dated 10 August 1989, 21 February 1991 and 28 April 1993.

China: Martial law imposed in Lhasa, Tibet, on 8 March 1989. Lifted on 1 May 1990.

Martial law imposed in Beijing on 20 May 1989. Lifted on 11 January 1990.

Sources: Letters from the Government dated 8 May and 15 August 1989. Letter dated 12 January 1990 from the Permanent Representative of China (reproduced in E/CN.4/1990/55); information received from non-governmental organizations and other information published in the press.

Colombia:* State of siege proclaimed on 1 May 1984. Lifted on 7 July 1991.

State of internal disturbance was decreed from 10 to 16 July 1992 and from 8 November 1992 to 6 February 1993. On 5 February 1993, additional measures relating to the state of internal disturbance were decreed and it was extended until 7 May 1993.

State of internal disturbance was again decreed from 1 to 10 May 1994 throughout the national territory. Subsequently extended for two months.

The Special Rapporteur has not receive any information from the Government on whether the state of internal disturbance was lifted.

Sources: Notifications of the Government to the United Nations Secretary-General dated 7 May and 11 December 1984, 9 August 1991 and 16 July and 10 November 1992, 5 March 1993 and 6 and 27 May 1994; letters from the Government dated 21 December 1987, 13 July 1988, 18 April 1989, 16 September 1991, 24 July and 11 November 1992, and 27 January and 27 April 1993.

Congo: State of emergency was in force from 16 July to 15 August 1993. Curfews were imposed in the cities of Brazzaville and Pointe-Noire at the beginning of July 1993.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Croatia:* Admitted to the United Nations on 22 May 1992, this newly emerged State found itself in a de facto state of emergency at the moment of its transition to independence. The Special Rapporteur awaits more precise information to be submitted by the Government.

Sources: Periodic reports on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. T. Mazowiecki, Special Rapporteur of the Commission on Human Rights (latest: E/CN.4/1995/57, paras. 51-79); information published in the press.

Djibouti: On 16 November 1991, a curfew was introduced in the district of Obock.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Ecuador: Repeated proclamation of state of national emergency (14 to 17 March 1986, 28 to 30 October 1988, 31 May to 1 June 1988 and 27 September to 13 October 1989).

Sources: Letters from the Government (latest dated 12 January 1990); notifications of the Government to the United Nations Secretary-General dated 14 and 18 March 1986, 28 and 30 October 1987, 1 and 2 June 1988 and 2 August 1989.

Egypt:* State of emergency has been in force since 6 October 1981. It was extended for a three-year period from 1 May 1988 to 31 May 1991.

Sources: Letter from the Government dated 28 March 1991; information received from non-governmental organizations.

On 1 June 1991, martial law was extended for another three years.

Sources: Report of the Human Rights Committee (A/48/40, paras. 671, 690 and 704); information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

El Salvador: Suspension of certain constitutional guarantees since 6 March 1980. Successive extensions of martial law in 1984-1985. Termination of state of emergency on 12 January 1987. Further suspension of constitutional guarantees on 12 November 1989 for 30 days, subsequently extended until mid-April 1990.

Sources: Notifications of the Government to the United Nations Secretary-General (latest dated 31 July 1985, 13 November 1989 and 5 January 1990); letters from the Government, latest dated 18 August 1989; information received from non-governmental organizations.

Ethiopia: The existence of a de facto state of emergency for quite some time has been reported. From May 1988, state of emergency in force in the regions of Tigray and Eritrea. Terminated in May 1991.

In May 1991, a curfew was introduced in Addis Ababa. Lifted on 31 May 1992.

Sources: Statement by the observer for Ethiopia at the forty-fourth session of the Subcommission, on 19 August 1992; information received from non-governmental organizations and published in the press.

Fiji: State of public emergency proclaimed on 14 May 1987. Terminated on 5 December 1987.

Sources: Letters from the Government dated 6 November and 7 December 1989.

France: State of emergency proclaimed in New Caledonia and dependencies on 12 January 1985. Extended until 30 June 1985.

State of emergency proclaimed in Wallis and Futuna on 29 October 1986. Terminated on 30 October 1986.

Sources: Notification of the Government to the Secretary-General of the Council of Europe; letter from the Government dated 9 July 1987.

Gabon: State of siege introduced in the province of Port-Gentil. Curfew in force since May 1990. Terminated in August 1990.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Gambia: State of emergency proclaimed on 2 August 1981. Terminated on 8 February 1985.

Sources: Information received from non-governmental organizations.

Georgia:* On 18 July 1989, a "special regime of conduct for citizens" was introduced in the Abkhaz autonomous republic.

On 12 December 1990, a state of emergency was introduced and subsequently extended in Tskhinvali and Dzhavski district (South Ossetia). Terminated on 26 November 1991.

In September 1991, a state of emergency was introduced in Tbilisi, the capital city of Georgia.

In January 1992, a state of emergency was declared and a curfew introduced in Kutaisi and several districts of western Georgia.

On 6 July 1993, martial law was imposed in Abkhazia.

In September 1993, a state of emergency was introduced in the whole territory of the Republic for a period of two months and subsequently extended.

Sources: Information received from non-governmental organizations and published in the press. In two letters dated 19 May 1992 and 11 October 1993, the Special Rapporteur requested the Government of Georgia to provide information regarding the emergency measures taken and their impact on human rights.

Guatemala: On 25 May 1993, the suspension of certain constitutional guarantees was decreed, which was enforced for several days.

Sources: Letter from the Government dated 30 June 1993, received in reply to Special Rapporteur's request for information of 17 June 1993; report on the situation of human rights in Guatemala, prepared by Ms. Monica Pinto, Independent Expert of the Commission on Human Rights (E/CN.4/1994/10, paras. 16-21); information published in the press.

Guyana: State of emergency declared on 28 November 1991.

Sources: Letter from the Government dated 24 March 1993.

Haiti: State of siege proclaimed on 29 January 1986. Terminated on 14 February 1986.

Sources: Letters from the Government dated 10 June 1987 and 16 March 1989.

State of siege introduced on 20 January 1990. Lifted on 30 January 1990.

Sources: Commission on Human Rights resolution 1990/56 of 7 March 1990; reports on human rights situation in Haiti prepared by Mr. P. Texier, Independent Expert (E/CN.4/1990/44/Add.1, paras. 1 and 20; E/CN.4/1991/33, paras. 3, 11 and 125).

In September 1991, a curfew was introduced in Port-au-Prince. In a letter dated 22 October 1991 addressed to the Government of Haiti, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Not having received a reply from the authorities in the capital and possessing reliable information regarding the de facto state of emergency which existed in Haiti, the Special Rapporteur undertook a study on this issue (see chapter III of his sixth report, E/CN.4/Sub.2/1993/23/Rev.1).

After the return to Haiti, in October 1994, of its constitutional President, the de facto state of emergency in the country ceased to exist.

Honduras: State of emergency proclaimed on 8 April 1988. Terminated on 13 April 1988.

Sources: Information received from non-governmental organizations and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

India: The Special Rapporteur awaits more precise information from the Government concerning the measures taken in Kashmir, Punjab, areas in the north-east and in Andhra Pradesh, where, according to non-governmental sources, certain constitutional guarantees were said to have been suspended under special laws which in effect established a continuing state of emergency.

On 7 December 1992, an indefinite curfew was imposed in parts of Old Delhi. Curfews were also ordered in some other large cities.

On 2 August 1993, a curfew was imposed in the town of Srinagar, Kashmir.

On 11 May 1995, a curfew was again introduced in Srinagar.

Sources: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. B.W. Ndiaye (E/CN.4/1993/46, paras. 333-334); information received from non-governmental organizations and published in the press.

Iraq: The Special Rapporteur was awaiting information from the Government concerning the emergency measures taken during the armed conflict of 1991 and afterwards, as well as in connection with the events that have taken place in the Kurdish provinces. In a letter dated 4 March 1993, the Government of Iraq stated, inter alia, that:

"Despite the exceptional situation it has faced as a result of the aggression perpetrated against it by some 30 countries and in spite of the ensuing unrest, Iraq has neither proclaimed a state of emergency nor restricted the implementation of the articles of the Constitution or the laws, nor adopted measures which might undermine respect for human rights in general."

The Special Rapporteur intends to hold further consultations with the Government of Iraq. He will also consult the Special Rapporteur on the situation of human rights in Iraq in order to obtain a current evaluation by that independent expert of the situation in this country.

Sources: Letters from the Government dated 23 June 1987 and 4 March 1993; note verbale dated 3 July 1991 from the Permanent Mission of Iraq to the Centre for Human Rights (reproduced in E/CN.4/Sub.2/1991/51); reports on the situation of human rights in Iraq, prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights (A/46/647, para. 60; E/CN.4/1992/31, paras. 22-39 and 151; E/CN.4/1994/58, para. 15; E/CN.4/1995/56, para. 17).

Ireland: State of emergency was in force from 1 September 1976 until February 1995.

Sources: Letter from the Government dated 2 June 1995; report of Ireland to the Human Rights Committee (CCPR/C/68/Add.3, paras. 29-31); report of the Human Rights Committee (A/48/40, paras. 561, 574, 582-583, 603 and 611); information received from a non-governmental organization.

Israel:* State of emergency in force since May 1948.

Sources: Notification of the Government received by the Secretary-General on 3 October 1991; letter from the Government dated 28 May 1991.

Territories occupied by Israel:* Emergency legislation in force.

Curfews imposed in the Gaza Strip and the West Bank since December 1992.

Sources: United Nations reports; information received from intergovernmental and non-governmental organizations and published in the press. The Special Rapporteur awaits more detailed information to be submitted by the Government of Israel regarding the emergency measures taken and their impact on human rights.

Jordan: Martial law declared on 5 June 1967.

The Government's decision to repeal martial law was endorsed by royal decree of 30 March 1992.

Sources: Letter from the Government dated 12 July 1993; reports of Jordan to the Human Rights Committee (CCPR/C/1/Add.55 and 56, CCPR/C/46/Add.4 and CCPR/C/76/Add.1); reports of the Human Rights Committee (A/46/40, para. 578; A/49/40, para. 231); information received from non-governmental organizations.

Kazakhstan: On 19 June 1989, a curfew was introduced in the town of Novy Uzen, Guriev district. Lifted on 24 July 1989.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Kenya: According to a non-governmental source, a long-term state of emergency has been in effect in the north-eastern part of the country until the beginning of 1992. The Special Rapporteur awaits more precise information to be submitted by the Government, especially with regard to the emergency-type detention law currently in force.

Kuwait: On 26 February 1991, martial law was declared for a three-month period. Subsequently extended until 26 June 1991.

Sources: Letter from the Government dated 14 September 1993; information received from non-governmental organizations and published in the press.

Kyrgyztan:* From 7 June to 21 November 1990, a state of emergency was in force in the capital, Frunze (now renamed Bishkek). On 4 and 7 June 1990, a state of emergency was decreed and a curfew

imposed in Osh town and in Osh region. Still in force. Partially lifted on 14 September 1991. In January 1993, a special regime of entry and exit was introduced in Osh region.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Lesotho: State of emergency declared on 25 February 1988. Reinstated on 2 May 1988. Lifted in early 1990.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

Liberia:* Suspension of certain constitutional guarantees since July 1990. Curfew enforced in the capital.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Madagascar:* State of emergency declared on 23 July 1991 and subsequently extended. Curfew enforced in the capital.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Malawi: Emergency legislation in force since 1965 which expressly provides for preventive detention.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

Malaysia: Four states of emergency proclaimed since independence were never revoked. The latest nationwide state of emergency was declared on 15 May 1969. Emergency legislation currently in force which expressly provides for preventive detention.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Mali:* State of emergency declared on 22 March 1991.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Mauritania: A curfew was introduced in rural areas of the south. A de facto state of emergency has been reported to exist in the Senegal river valley. In October 1992, a curfew was enforced in the capital.

Sources: Information published in the press and received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Moldova: From 26 October to 6 December 1990, a state of emergency was in force in several southern districts.

On 16 March 1992, a "special situation" regime was introduced on the left bank of Dnestr river. Lifted in September 1992. Curfew still in force. The "special situation" regime was again introduced in this area from 19 January to 1 March 1994.

On 28 March 1992, a state of emergency was decreed in the whole territory of the Republic. Lifted on 19 August 1992.

Sources: Letter from the Government dated 25 June 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information received from non-governmental organizations and published in the press.

Myanmar:* State of emergency proclaimed at Prome on 22 July 1988 and in the Yangon region on 3 August 1988. Terminated on 24 August 1988.

Martial law introduced on 18 September 1988. By end of May 1990, it was lifted in 102 townships.

The curfew imposed on 10 October 1990 was lifted on 10 September 1992.

On 26 September 1992, two martial law orders dated 17 and 18 July 1989 were revoked.

In a letter dated 4 August 1994, the Government stated that "the state of emergency is no longer ... in force in Myanmar since 24 August 1988". It further indicated that "the State and Law Order Restoration Council Order No. 12/92 issued on 26 September 1992 revoked the executive and judicial powers conferred upon the three Military Commanders and at the same time abolished all the Military Tribunals".

The Special Rapporteur has noted that the Commission on Human Rights, in its resolution 1995/72 of 8 March 1995, gravely concerned at "the existence of important restrictions on the exercise of fundamental freedoms, including the freedom of expression and association", encouraged the Government of Myanmar "to continue to lift the remaining emergency measures". (para. 17).

Sources: Letters from the Government dated 29 May and 24 August 1987, 16 May and 17 August 1989, 26 January, 21 March, 7 May and 14 June 1990, 4 March 1991, 18 August, 28 September, 7 and 19 October 1992, 22 January 1993 and 4 August 1994; reports on the situation of human rights in Myanmar, prepared by Mr. Y. Yokota, Special Rapporteur of the Commission on Human Rights (E/CN.4/1993/37, para. 242 (d); E/CN.4/1995/65, paras. 8-9); information received from non-governmental organizations.

Nicaragua: State of emergency was in force, with brief interruptions, from 15 March 1982 to 19 January 1988, and from 20 October to 15 November 1988.

From 18 May to 17 June 1993, a partial suspension of certain constitutional rights and guarantees was decreed in some parts of the country.

Sources: Notifications of the Government to the Secretary-General of the United Nations, latest dated 4 February, 21 October and 16 November 1988 and 19 May and 11 August 1993.

Niger:* A state of emergency has been in force in the north of the country since 1992.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

Nigeria: State of emergency proclaimed on 31 December 1983.

In October 1991, an indefinite night time curfew was imposed in the State of Kano.

On 18 November 1993, the Parliament was dissolved and certain constitutional guarantees suspended.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Pakistan: Martial law was in force from 5 July 1977 to 30 December 1985.

State of emergency proclaimed on 17 August 1988. Terminated on 1 December 1988.

Sources: Letters from the Government, latest dated 24 October and 5 December 1989.

Panama: State of emergency proclaimed on 10 June 1987. Terminated on 29 June 1987.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 11 and 30 June 1987.

Papua New Guinea: State of emergency proclaimed on 17 June 1985. Terminated on 21 October 1985.

State of emergency declared on 26 June 1989. On 12 January 1990 extended for a further two months.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Paraguay: State of siege, which had been in force since 1954, was terminated on 9 April 1987.

Sources: Letters from the Government, latest dated 27 April 1987 (reproduced in doc. E/CN.4/Sub.2/1987/18).

Peru:* A state of emergency, which was declared for the first time in 1981, is currently in force in a considerable part of the territory; extension of states of emergency in certain provinces and departments and declaration of new states of emergency are periodically reported.

Sources: Notifications of the Government to the United Nations Secretary-General (latest dated 8 February 1995); letters from the Government addressed to the Centre for Human Rights (latest dated 18 August 1993).

On 5 April 1992, the President of the Republic dissolved the Parliament and suspended, temporarily and partially, the Constitution throughout the territory of Peru. This suspension of constitutional rule ended on 30 December 1992.

Sources: Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Mr. B.W. Ndiaye, on his mission to Peru (E/CN.4/1994/7/Add.2, paras. 16, 21-24, 75, 86-88, 119-120); information published in the press and received from non-governmental organizations.

Philippines: De facto states of emergency lasting only a few days were imposed in February 1986 during the revolution and at the time of the attempted coup d'état of 28 August 1987.

State of national emergency proclaimed on 6 December 1989. Ended on 7 June 1990.

Sources: Letters from the Government dated 10 December 1987, 2 April 1991 and 21 September 1992.

Russian Federation:* On 19 April 1991, a state of emergency was introduced in Vladikavkaz (North Ossetia) for a period of one month and subsequently extended until 19 September, 19 December 1991, 19 April and 10 August 1992.

On 13 June 1991, a state of emergency was introduced in Makhachkala, the capital city of Dagestan, for a period of one month.

On 19 August 1991, a state of emergency was declared in some parts of the USSR for six months by the newly established State Committee for the Emergency Situations. On 22 August 1991, all decrees of this Committee were cancelled by the President of the USSR.

Sources: Statement made by the observer for the USSR at the forty-third session of the Sub-Commission, on 30 August 1991; information received from non-governmental organizations and published in the press.

From 11 to 28 September 1991, a state of emergency was in force in the Kazbek district of Dagestan.

Repeated introduction of states of emergency in the Chechen Republic. A curfew was imposed on 10 February 1992 in its capital, Grozny, for 30 days.

In May 1992, a state of emergency was introduced in Makhachkala and Kizilyourt cities of Dagestan.

Sources: Information published in the press. In a letter dated 19 May 1992, addressed to the Government of the Russian Federation, the Special Rapporteur requested more detailed information regarding the emergency measures taken in some parts of the country and their impact on human rights.

On 10 June 1992, a state of emergency was introduced in several districts of the North Ossetia; curfew imposed in Vladikavkaz.

Sources: Letter from the Government dated 21 July 1992.

On 27 September 1992, a state of emergency was proclaimed in Nalchik, the capital city of Kabardino-Balkaria, for a period of two months; its actual introduction was, however, suspended.

On 2 November 1992, a state of emergency was introduced in the North Ossetia and in the Ingush Republic for a period of one month. Subsequently, the emergency regime in several districts and areas of Ingushetia and North Ossetia was repeatedly extended (last time: from 3 December 1994 to 31 January 1995).

Sources: Notifications of the Government of the Russian Federation to the United Nations Secretary-General dated 3 November 1992, 28 October and 23 December 1993; 22 April, 20 May, 21 June, 12 August, 21 October 1994 and 4 January 1995; letters from the Government dated 4 November and 21 December 1992 and 28 June, 11 August, 25 October and 29 December 1993, 31 May, 20 June and 15 November 1994; information received from non-governmental organizations and published in the press.

State of emergency was decreed from 3 to 10 October 1993 and a curfew introduced in the city of Moscow. Extended until 18 October 1993.

Sources: Notifications of the Government to the United Nations Secretary-General dated 4 and 21 October 1994; letters from the Government dated 4 and 25 October 1993; information published in the press.

On 29 May 1994, a curfew was decreed in the Chechen Republic for one month. Martial law introduced in the Chechen Republic on 12 October 1994.

Sources: Information published in the press.

Rwanda:* State of siege declared in October 1990.

Sources: Statement by the Minister of Justice of Rwanda of 17 January 1991; information received from non-governmental organizations and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Senegal: State of emergency was proclaimed from 29 February to 20 May 1988 and from 28 April to 19 May 1989.

Sources: Letters from the Government dated 20 September 1988, 15 January 1990 and 17 March 1993.

Sierra Leone:* State of emergency declared on 2 November 1987. Renewed on 8 March 1988.

On 30 April 1992, a state of emergency was declared and a curfew imposed.

Sources: Information received from non-governmental organizations and published in the press. In a letter dated 19 May 1992, addressed to the Government of Sierra Leone, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Singapore: Emergency legislation currently in force which expressly provides for preventive detention.

Sources: Letter from the Government dated 18 August 1989; information received from non-governmental organizations.

Somalia:* Emergency regulations in force in areas affected by armed conflict.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

South Africa: State of emergency in 36 magisterial districts was proclaimed on 21 July 1985. A country-wide state of emergency has existed since 12 June 1986. Successive proclamations or extensions of states of emergency as well as lifting of some emergency regulations took place in 1987, 1988, 1989 and 1990.

On 7 June 1990, the state of emergency was lifted in all areas of the country, except Natal. The lifting of the state of emergency in Natal province was announced on 18 October 1990.

Sources: Letters from the Government dated 1 September 1988 and 6 July 1989 (cf. E/CN.4/Sub.2/1989/45); information submitted by the Special Committee against Apartheid; information received from non-governmental organizations.

On 28 October 1991, a state of emergency was imposed throughout the Ciskei.

Sources: Report of the Ad Hoc Working Group of Experts on southern Africa (E/CN.4/1992/8, paras. 167 and 168).

In its 1994 report, the Ad Hoc Working Group of Experts stated that in 1993, a large number of magisterial districts had been declared "unrest areas", thus creating a situation analogous to that under the declaration of an emergency (E/CN.4/1994/15, paras. 44 and 136).

On 31 March 1994, a state of emergency was introduced in Natal province. Lifted on 7 September 1994.

Sources: Letter from the Government dated 13 September 1994; information published in the press.

Sri Lanka:* State of emergency proclaimed on 18 May 1983. Terminated on 11 January 1989.

State of emergency declared on 20 June 1989. Terminated on 4 September 1994, except in the Northern and Eastern provinces and in certain other areas bordering those two provinces.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 21 and 23 May 1984, 13 January and 18 August 1989 and 29 September 1994; letter from the Government dated 11 April 1991; reports of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18/Add.1, paras. 60-72 and 195; E/CN.4/1993/25/Add.1, paras. 16 and 146 (a)); information received from non-governmental organizations.

Sudan:* States of emergency proclaimed on 6 April 1985, 25 July 1987 and 30 June 1989. Still in force.

Sources: Notifications of the Government to the United Nations Secretary-General dated 21 August 1991 and 13 February 1992; report of Sudan submitted to the Human Rights Committee (CCPR/C/45/Add.3); report on the situation of human rights in the Sudan, prepared by Mr. G. Bíró, Special Rapporteur of the Commission on Human Rights (E/CN.4/1994/48, paras. 22-23); information received from non-governmental organizations.

Suriname: State of emergency was in force from August 1980 to 25 February 1986. On 1 December 1986, state of emergency was proclaimed in the eastern part of the country. Terminated on 1 September 1989.

Sources: Letters from the Government dated 5 December 1986 (reproduced in A/41/958), 13 March and 24 June 1991; information received from non-governmental organizations.

Syrian Arab Republic:* State of emergency proclaimed on 8 March 1963. Still in force.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Tajikistan:* In July 1989, a curfew was introduced in Isfara region.

On 12 February 1990, a state of emergency was declared in the capital, Dushanbe. Lifted on 29 June 1991.

On 23 September 1991, a state of emergency was introduced throughout the republic. Lifted on 30 September 1991.

Sources: Notification of the Government of the USSR to the United Nations Secretary-General dated 23 March 1990; information received from non-governmental organizations and published in the press.

State of emergency proclaimed and a curfew introduced on 5 May 1992. Lifted on 7 May 1992.

In September 1992, a state of emergency was introduced in several districts and towns of Kurgan-Tyube and Kuliab provinces.

On 23 October 1992, a state of emergency and a curfew were decreed in the capital, Dushanbe.

On 7 January 1993, a state of emergency was again declared and a curfew imposed in Dushanbe for a period of one month.

Sources: Information published in the press. In two letters dated 19 May and 28 October 1992, the Special Rapporteur requested the Government of Tajikistan to provide information regarding the emergency measures taken and their impact on human rights.

In February 1993, a state of emergency was declared and a curfew imposed in the whole territory of the country. Extended in July 1994. Still in force.

Sources: Notification of the Government to the secretariat of the Conference on Security and Cooperation in Europe; information published in the press.

Thailand: Martial law introduced on 23 February 1991. Lifted on 3 May 1991.

On 18 May 1992, a state of emergency was introduced in Bangkok and surrounding provinces. Lifted on 26 May 1992.

Sources: Statement by the observer for Thailand at the forty-third session of the Subcommission, on 22 August 1991; letter from the Government dated 22 July 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information published in the press.

Togo: In April and in November 1991, curfews were introduced in Lomé, capital of the republic.

Sources: Report of the Human Rights Committee (A/49/40, para. 253); information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Trinidad and Tobago: A state of emergency was proclaimed on 28 July 1990 for a period of 90 days and subsequently extended. Remained in force until 9 December 1990.

Sources: Notification of the Government to the Secretary-General of the United Nations dated 15 August 1990; letter from the Government dated 12 March 1993.

Turkey:* Martial law, which was introduced on 26 December 1978 in 13 provinces, was proclaimed throughout the entire territory on 12 September 1980. As at 1 January 1985, it was in force in 34 provinces. By 19 July 1987 martial law was lifted throughout the country. In 1985-1987, in certain provinces, martial law was replaced by a state of emergency which is currently in force in 10 provinces in south-east Anatolia.

Sources: Letters from the Government dated 9 June 1987, 19 July 1988 and 15 February 1991; information received from non-governmental organizations.

Uganda: The existence of a de facto state of emergency has been reported, related particularly to the application of the Public Order and Security Act of 1967.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

United Kingdom of Great Britain and Northern Ireland:* Since 1974, a public emergency exists relating to the affairs of Northern Ireland.

Sources: Notifications of the Government to the United Nations Secretary-General dated 23 December 1988 and 23 March 1989; communication from the Government received by the Secretary-General on 18 December 1989; reports to the Human Rights Committee (latest documents: CCPR/C/58/Add.6, paras. 57-60; CCPR/C/58/Add.12, para. 18).

United States of America: States of emergency proclaimed and curfews imposed in Los Angeles, San Francisco, Las Vegas, Atlanta and some other places for short periods at the end of April-beginning of May 1992.

Sources: Letter from the Government dated 1 June 1992, received in reply to Special Rapporteur's request for information of 18 May 1992; information published in the press.

Uzbekistan: On 4 June 1989, a curfew was introduced in several townships of Fergana district.

Sources: Information received from a non-governmental organization and published in the press. In a letter dated 19 May 1992, addressed to the Government of Uzbekistan, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Venezuela:* Emergency measures and suspension of certain constitutional guarantees were decreed on 28 February 1989.

On 22 March 1989, all the constitutional safeguards were re-established.

Sources: Notifications of the Government to the United Nations Secretary-General dated 17 and 31 March 1989; letters from the Government dated 3 and 18 April 1989 and 7 December 1990.

On 4 February 1992, certain constitutional guarantees were suspended. On 13 February 1992, a partial restoration of previously suspended guarantees was decreed. By a decree dated 9 April 1992, the President of the Republic has restored all constitutional guarantees.

Sources: Notifications of the Government to the United Nations Secretary-General dated 4 and 21 February and 24 April 1992; letter from the Government dated 11 February 1992.

On 27 November 1992, suspension of certain constitutional guarantees was decreed. By decrees dated 1 and 22 December 1992 and 16 January 1993, all constitutional guarantees were restored.

From 16 to 25 January 1993, certain constitutional guarantees were again suspended in some parts of the national territory.

Sources: Letter from the Government dated 1 April 1993; information received from non-governmental organizations.

On 27 June 1994, certain constitutional guarantees were suspended in the whole territory of the country. The Government stated that this measure was motivated by the alarming financial and economic situation, which might endanger public security.

Source: Notification of the Government to the Secretary-General of the United Nations dated 29 June 1994. In a letter dated 1 December 1994, addressed to the Government of Venezuela, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

The Special Rapporteur was later advised that the emergency measures were of a purely economic character and had no effect on the realization of civil and political rights.

Yemen:* On 5 May 1994, a 30-day state of emergency was declared and a curfew imposed in the whole territory of the country.

Sources: Information published in the press. In a letter dated 16 May 1994, addressed to the Government of Yemen, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Yugoslavia:* On 28 March 1989, special measures involving suspension of freedoms of assembly and movement were introduced in the province of Kosovo. On 18 April 1990, all the emergency measures in the territory of the province were lifted.

Sources: Notifications of the Government to the United Nations Secretary-General dated 14 April 1989, 29 May 1989, 19 March 1990 and 24 April 1990.

On 18 October 1991, the "existence of an immediate threat of war" was established by the decision of the Presidency of the SFRY throughout the territory of the country.

Sources: Letters from the Government dated 18 and 21 February 1992.

Except for Slovenia, the other newly emerged States which made up the former Yugoslavia found themselves in a de facto state of emergency at the moment of their transition to independence.

Sources: Fifth periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. T. Mazowiecki, Special Rapporteur of the Commission on Human Rights (E/CN.4/1994/47); information published in the press.

Zaire: In a letter dated 28 October 1991, addressed to the Government of Zaire, the Special Rapporteur requested more detailed information regarding the emergency measures taken in connection with September riots in the country, and their impact on human rights.

A non-governmental source later advised the Special Rapporteur that those measures did not constitute a state of emergency and were of very short duration. The Special Rapporteur therefore awaits more precise information to be submitted by the Government of Zaire.

Zambia:* State of emergency introduced on 27 July 1964. Lifted in 1991.

State of emergency declared on 4 March 1993.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government of Zambia in reply to his letter dated 17 June 1993.

Zimbabwe: State of emergency, which had been in force since November 1965, was lifted on 25 July 1990.

Sources: Letters from the Government dated 23 March and 12 July 1988; information received from non-governmental organizations.

47. The Special Rapporteur is aware of the possibility that the existence of a state of emergency in other countries might not have come to his knowledge and trusts that the cooperation of States and intergovernmental and non-governmental organizations in the procedure being applied will soon enable him to give a full account of the situation worldwide.

## V. OTHER OBSERVATIONS AND COMMENTS

48. As in previous years, the Special Rapporteur has been closely following the work of the Human Rights Committee, especially with regard to its practice in dealing with the implementation by States parties of article 4 of the International Covenant on Civil and Political Rights.

49. The Special Rapporteur noted with interest pertinent statements made by the Human Rights Committee in the course of the consideration, at its forty-sixth to fifty-first sessions, in 1992-1994, of the reports submitted by States parties under article 40 of the Covenant.

50. The Special Rapporteur refers in particular to the Committee's concluding observations and comments relating to Egypt, Mexico, Cameroon, Jordan, Togo and Azerbaijan in which the Committee described some of its principal subjects of concern as follows:

Egypt

"The Committee notes that the state of emergency in force in Egypt without interruption since 1981 constitutes one of the main difficulties impeding the full implementation of the Covenant by the State party. In this connection, the Committee regrets that Egypt has not informed the other States parties to the Covenant, through the Secretary-General, of the provisions from which it has derogated and of the reasons by which it was actuated, as specifically required by article 4, paragraph 3, of the Covenant.

"... Moreover, certain powers granted to the President of the Republic under the Emergency Act were subject of concern, such as the ratification of judgements handed down by State security (emergency) courts, which may influence the independence of the judiciary, or the possibility of referring judicial cases to military courts. In this connection, members of the Committee considered it necessary to have a clear indication of the human rights affected by the state of emergency and the extent to which they had been affected."

(A/48/40, paras. 690 and 704)

Mexico

"The Committee strongly deplores the events that occurred recently in Chiapas which resulted in many violations of the rights guaranteed by the Covenant, in particular, in articles 6, 7 and 9 thereof. The Committee notes that, since a state of emergency was not declared in Chiapas in early 1994, the authorities have restricted the rights provided for in the Covenant, particularly in articles 9 and 12, without respecting the guarantees provided for therein."

(A/49/40, para. 171)

Cameroon

"The Committee regrets the fact that the Secretary-General was not notified in the correct manner, in accordance with the requirements of article 4 of the Covenant, of the proclamation of a state of emergency at the time of the events that took place in the country's Nord-Ouest province in 1992."

(A/49/40, para. 189)

Jordan

"The Committee is concerned that the State Security Court continues to exercise special jurisdiction and that, in accordance with articles 124 and 125 of the Constitution and under the new Defence Act, ordinary law can be suspended in emergency situations, contrary to the provisions of article 4 of the Covenant, which prohibit derogation from some categories of human rights. The lack of clarity with regard to accountability for acts performed under provisions of the Martial Law is also a matter of concern."

(A/49/40, para. 231)

Togo

"The Committee regrets the fact that derogations from some of the rights provided for in the Covenant through proclamation of curfews during the transitional period have not been notified to the Secretary-General in accordance with article 4 of the Covenant."

(A/49/40, para. 253)

Azerbaijan

"The Committee notes that a state of emergency was declared in 1993 and is concerned by the lack of clarity in the law governing the conditions in which the state of emergency can be implemented."

(A/49/40, para. 297)

51. The Special Rapporteur also noted that in a number of cases the Human Rights Committee, when dealing with emergency issues under article 4 of the Covenant, pronounced its opinion on the appropriate legislation even of those States parties in which neither a state of emergency existed, nor was there a situation of concern regarding violations of human rights. This relates in particular to the comments adopted by the Committee subsequent to the consideration of the reports submitted by the Dominican Republic, Tanzania and Uruguay. The Committee expressed its concern over some of the domestic legal provisions of those States and stated that the grounds for declaring a state of emergency were too broad there and that the range of rights that might be derogated from was too wide to be in conformity with article 4 of the Covenant (A/48/40, paras. 184, 459 and 503).

52. Finally, the Special Rapporteur noted with interest and appreciation the Committee's procedures in dealing with emergency situations (A/49/40, paras. 45-47)

Notes

1/ This is apparent from an examination of the situation of countries that have emerged from the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII). The great majority of these cases involve countries which, at the time of consideration were subject to an officially declared or de facto state of emergency under which the Governments had adopted emergency measures. As regards the vulnerability of inalienable rights under states of emergency, particular reference should be made to the successive reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture.

2/ See E/CN.4/Sub.2/1994/23, para. 19.

3/ Clearly, if a Government were, for example, to suspend the right to life, the population could hardly exercise its right to demonstrate or any other right. On the other hand, if a Government has proclaimed a state of emergency in response to an earthquake or to a war, it is normal for it to be authorized to suspend freedom of movement, in order to protect the population's right to life. However, even in the case of those rights that may be suspended, the Government must observe a number of principles and requirements concerning legality, the need for the measures adopted to be commensurate with the emergency, etc., which the Special Rapporteur has identified in his previous reports.

4/ Information relating to the first and second expert meetings held, respectively, on 25 February 1992 and on 2-3 March 1993 at the Palais des Nations at Geneva, can be found in the fifth and sixth annual reports of the Special Rapporteur (E/CN.4/Sub.2/1992/23/Rev.1, paras. 48-53, and E/CN.4/Sub.2/1993/23/Rev.1, paras. 79-86).

5/ For the sake of brevity, references to country-related information in previous reports have been omitted from the present composite list.

Annex I

REPORT OF THE MEETING OF EXPERTS ON RIGHTS NOT SUBJECT TO DEROGATION DURING STATES OF EMERGENCY AND EXCEPTIONAL CIRCUMSTANCES

Geneva, 17-19 May 1995

## I. Introduction

1. The Universal Declaration of Human Rights is accepted as the basic standard of human rights binding on all States. The possibility that States might be exempted from some of their obligations concerning human rights during exceptional circumstances is not expressly addressed in the Declaration, which was not intended to create binding obligations at the time it was adopted.

2. The drafting of the Declaration was contemporaneous with the drafting of the 1949 Geneva Conventions on international humanitarian law, which address this problem from the opposite point of view: `rather than classifying rights according to the impact which an emergency can have on them, they recognize rights which must be protected during a particular type of emergency, namely, armed conflict, which are non-derogable. Common article 3 of the Conventions protects the right of non-combatants to life, dignity and freedom "at any time and in any place whatsoever", prohibiting killing, torture, humiliating treatment, the taking of hostages and imprisonment without "judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples". 1/ Other provisions guarantee the right of the sick and wounded to care and to protection against violence and mistreatment, without discrimination, and the right of prisoners of war to humane treatment. 2/ Convention IV, concerning civilians, protects the rights of the family, the right to honour, humane treatment, protection from violence and "respect for religious customs and their manner and customs", without discrimination. 3/ It also recognizes the right of women to protection against rape, forced prostitution and indecent assault. 4/ The protection of these rights under the Geneva Conventions may have contributed to the view that it was not necessary to address the impact of emergencies on human rights in the Universal Declaration.

3. The Universal Declaration does contain a general provision on limitations, however. Article 29 (2) states: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing the due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." This rule applies to derogation as well as other limitations, and is a valuable criteria for identifying rights which must be considered non-derogable.

4. A few human rights treaties adopted during this early period contain provisions lowering or allowing exceptions to specific obligations in exceptional circumstances. The 1951 Convention on the Status of Refugees, for example, provides that refugees have the right not to be expelled without a hearing "except where compelling reasons of national security otherwise

require". 5/ The 1930 Convention on Forced Labour excludes from the scope of coverage "any work exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake ... and in general, any circumstance which would endanger the existence or well-being of the whole or part of the population". 6/

5. The drafters of the International Covenant on Civil and Political Rights and the European and American Conventions, whose drafting history is inextricably linked to that of the International Covenant, understood that extreme situations in which it is difficult or impossible to respect integrally the full range of civil and political rights recur in human history. Rather than leaving each State with unfettered discretion and sole responsibility to decide how to respond to such situations when they arise, the drafters concluded that the wiser course would be to provide all States with guidelines as to how the competing interests of national security and human rights should be reconciled in times of an exceptional threat to the life of the nation. Paradoxically, the purpose of derogation is to provide a temporary licence for certain violations of human rights, in order to preserve the rule of law and to ensure that measures taken by the State have the least possible impact on human rights. These guidelines include principles of general application and a list of rights which cannot be derogated from in any circumstance.

6. The main question addressed by the meeting of experts was whether the list of non-derogable rights is adequate, or whether it can or should be expanded. In theory the general principles should provide ample protection against the abuse of emergency powers, but in practice this has not been the case. The solution lies, in part, in stricter control and application of standards regarding derogation by the competent monitoring bodies, both regional and international, treaty-based and thematic. The meeting also concluded that the list of non-derogable rights can and should be expanded.

7. The primary vehicle for doing this should be interpretation rather than legislative initiatives. The Human Rights Committee could make a valuable contribution by updating its General Comments 5 [13] on article 4 of the International Covenant on Civil and Political Rights. Thematic rapporteurs and working groups can continue to contribute to the clarification of customary international law through their dialogue with States. Ultimately, one might hope to arrive at universal agreement on a short list of those rights which, in the nature of things, are those whose derogation may be necessary to overcome threats to the life of a nation. 7/ As a practical matter, efforts should focus on those rights which experience shows are most often derogated from without adequate justification and with unacceptable consequences for derogable rights, the rule of law and the democracy.

## II. Derogation under human rights treaties

### 1. Requirements and restrictions concerning derogation in the positive law

8. The International Covenant on Civil and Political Rights, European Convention and American Convention contain common general requirements regarding derogation. They include:

(a) The circumstances invoked as justification of emergency measures must be very serious, constituting an imminent threat to the life of the nation;

(b) The specific measures taken pursuant to the emergency are valid only to the extent they are strictly required by the exigencies of the situation;

(c) Emergency measures must not discriminate on certain grounds. 8/

9. They also contain an obligation that the derogation be reported to other States parties, and a savings clause indicating the right to derogate does not affect obligations under other instruments or under customary international law.

10. Finally, each of them lists certain articles which can not be derogated from in any circumstances. The articles listed as non-derogable by the International Covenant and the European and American Conventions are the right to life, the prohibition of torture and cruel, inhuman and degrading treatment and punishment, the prohibition of slavery and the prohibition of retroactive application of criminal law. The non-derogable character of the prohibition of torture is reinforced by article 2 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture." Protocol 7 to the European Convention adds freedom from double jeopardy. The International Covenant adds the right to legal personality, the prohibition of imprisonment for debt and freedom of thought and religion. The American Convention also adds the rights of the child and the family, the right to nationality and political rights.

11. The basic human rights provisions of the Geneva Conventions, mentioned above, are also non-derogable in the sense that they must be respected even in times of international and non-international conflicts, internal disturbances and foreign occupation. These standards were reaffirmed and strengthened by the Protocols adopted in 1977. Both Protocols, one applicable to international conflicts and the other to internal conflicts, prohibit collective punishment, corporal punishment, the detention of women and men together and recognizes the right of persons accused of a crime to most of the due process guarantees recognized by the International Covenant and other human rights treaties. 9/ Detailed rules on the protection of children are also contained in the Protocols. 10/

### 2. Doctrine of treaty-monitoring bodies regarding derogation from derogable rights

12. Assuming the existence of an emergency which poses a grave and imminent threat to the life of the nation, the principle of necessity is the most relevant standard for determining the legality, under international law, of emergency measures affecting rights not classified as non-derogable. The decision of the European Commission of Human Rights in the Lawless case, adopted in 1960, has stood the test of time and still furnishes the basic test of necessity for emergency measures in Europe and elsewhere. The decision established a three part test: are the measures adopted "apt to contribute to the solution of" a specific problem which forms part of the

emergency which is affecting the country in question; is the problem such that normal measures - i.e. those which would be compatible with international obligations without derogation - would not be inadequate and, thirdly, would other emergency measures having a lesser impact on human rights be able to solve the problem in question. 11/ The same test also was applied in the Ireland v. United Kingdom case, in which the Commission emphasized that "justification in terms of article 15 does not result automatically from the high level of violence. There must be a link between the characteristics of the violence, on the one hand, and the measures selected, on the other". 12/

13. The European Commission also stressed that emergency measures should be evaluated as applied, and took into account a series of measures which the Government had implemented in order to limit the adverse impact of detention on the rights of those concerned. 13/

14. In 1987 the Inter-American Court of Human Rights adopted two Advisory Opinions which, together with the above-mentioned decisions of the European Commission and Court constitute the most important landmarks in international human rights law concerning derogation. 14/ In Advisory Opinion No. 8 "Habeas Corpus in Emergency Situations", the Court addressed the question of whether a State can derogate from the right to challenge the legality of detention, which is not expressly mentioned in the list of non-derogable rights found in article 27 (2). The Court noted that, although the original purpose of habeas corpus was to protect individual liberty, a right which is subject to derogation, it has also evolved as the main judicial instrument for the protection of prisoners against torture and extra-legal execution. Being essential for the protection of the right to life and physical integrity, which are non-derogable, the right to habeas corpus, or its equivalent, becomes non-derogable itself.

15. Furthermore, the Opinion affirms that the legality of all emergency measures should be subject to judicial review, because adopting and implementing measures which are incompatible with international human rights obligations without judicial review would seriously weaken the rule of law and separation of powers, which are inseparably linked to the democratic form of government. 15/ The rule of law and democratic form of government are not only objectives underlying the Convention, they are conditions for membership in the Inter-American system. 16/ No interpretation of the Convention which would seriously weaken the rule of law and separation of powers could be allowed. Consequently, the Court concluded, judicial remedies must remain available not only for the protection of rights which may not be derogated from, but also those which a priori are subject to derogation, but have not been derogated from. 17/ Similarly, jurisdiction to review the vires of emergency measures in the light of the emergency decree, as well as the proportionality, reasonableness and fides of the application of emergency measures to specific individuals must be maintained. 18/ In Advisory Opinion No. 9, "Judicial Guarantees in States of Exception" the Court takes its reasoning one step further, declaring that, to the extent States have an obligation to make judicial remedies available during an emergency, the guarantees of due process must be respected "in the main". 19/

16. The Human Rights Committee has adopted a number of decisions under the Optional Protocol which concern the impact of states of emergency on human rights in various countries. Thus far, however, most of its decisions concern

violations of rights which are not derogable, violations which do not come within the scope of the measures adopted pursuant to the state of emergency or cases in which the Government failed to provide evidence of a threat to the life of the nation. 20/ Consequently, the Committee has not addressed the question of whether rights other than those expressly mentioned in article 14 (2) should also be considered non-derogable. In another context the Committee adopted a decision which implies that it considers the right to habeas corpus, the right of access to the courts and some of the elements of due process to be non-derogable (see below), but this interpretation has not yet been confirmed in its General Comments nor in decisions on communications under the Optional Protocol.

### 3. Proposals regarding the extension of non-derogable status to other rights

17. After reviewing the grave abuses of human rights which had occurred under cover of states of emergency in previous years around the world, the first Special Rapporteur on human rights and states of emergency made two proposals. First, she suggested that the list of rights not subject to derogation under the International Covenant should be enlarged to include all those having non-derogable status under other treaties. Secondly, she proposed that even though a right might be classified as derogable, "the restrictions [imposed during an emergency] should not modify that right to the point of making it non-existent". 21/ The nucleus which should remain is referred to as the "intangible core". Concretely, with regard to the rights to liberty and to a fair trial, she suggested that no derogation should be allowed from them, including the rights to habeas corpus, to communicate with freely chosen defence counsel, to due process, to have some observers present at the trial. She also proposed that retroactive modification of the competence of courts should be precluded, presumably to limit the shifting of competence for criminal matters to special emergency or military courts.

18. The proposals made by the Special Rapporteur were further developed by a series of meetings of international experts. 22/ The most recent of these produced the Turku Declaration of Minimum Humanitarian Standards, which the Commission on Human Rights decided in 1995 to forward to Governments for their comments. 23/

### 4. The question of derogation from human rights treaties which do not contain derogation provisions

19. Many experts agree that there are customary rules of international law concerning derogation which, in certain circumstances, would allow a State to take exceptional measures affecting its human rights obligations under customary international law. But is there any rule of international law which would allow States which are parties to human rights treaties not having derogation provisions to derogate from their obligations under those instruments?

20. The Chairman of the Committee on Economic, Social and Cultural Rights has suggested the following reasons why the International Covenant on Economic, Social and Cultural Rights does not contain an article on derogation:

"(1) the nature of the rights contained in the Covenant and the fact that the case for derogation in times of emergency from, for example, the right to food or to health care would seem inherently less compelling than the case for derogation from the right to peaceful assembly or the right to vote; (2) the existence of a general limitations clause in the Covenant, unlike the approach adopted in the Covenant of Civil and Political Rights and (3) the more flexible and accommodating nature of the basic obligation contained in article 2 (1) of the Covenant." 24/

21. The 1981 African Charter of Human and Peoples' Rights likewise contains no article on derogation. A similar explanation has been offered for the absence of such an article in this instrument, namely, that the limitations clauses are so broad that there is no need for derogation.

22. Most International Labour Organization conventions do not have provisions on derogation, and the organs which monitor compliance with them have had occasion to address the issue of whether States parties must comply with all their obligations under such treaties during a state of emergency. In one landmark case, a commission of inquiry investigating violations of Convention No. 87 on freedom of association stated:

"The position of pleas of emergency or necessity in international custom may be said to correspond essentially, within the peculiar framework of the international community, to the place given to pleas of force majeure or legitimate self-defence in national systems of law. ... Both the general principles of law derived from national practice and international custom are based on the assumption that the non-performance of a legal duty can be justified only where there is impossibility of proceeding by any other method than the one contrary to law." 25/

23. In another case, a Commission of Inquiry concluded that measures incompatible with the Freedom of Association Conventions would be acceptable if they were "strictly necessary given the exigencies of the situation". 26/ The Chairman of the Committee on Economic, Social and Cultural Rights has suggested that the same principles are applicable to that Covenant, adding that the principle that all limitations must be "compatible with the nature of the rights", recognized in article 4 of the Covenant, could serve as a basis for inferring that certain rights should be considered non-derogable. 27/

24. The Convention on the Rights of the Child, one of the most recent and widely ratified human rights treaties, is another which contains no article concerning derogation. This Convention covers a broad range of civil, economic, social and cultural rights, roughly equivalent to the combined content of the 1968 International Covenants.

25. At first glance, it would seem self-evident that, in the absence of a provision expressly allowing derogation, a State party is unconditionally bound by all the obligations contained in a treaty it has ratified Pacta sunt servanda. 28/ This conclusion is reinforced by the savings clause common to all the major human rights treaties that expressly allow derogation, which provides that the emergency measures authorized by those provisions must not be "inconsistent with their other obligations under

international law." 29/ There is, however, an exception to the rule pacta sunt servanda in the international law of treaties, namely, the rule of impossibility. The Vienna Convention on the Law of Treaties states:

> "A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty." 30/

26. The jurisprudence of the ILO Commission of Inquiry identifies the doctrine of impossibility, sometimes referred to as force majeure, as the main source of its jurisprudence regarding derogation from treaties which do not have derogation clauses. Clearly, a State party cannot be held responsible for non-compliance with a human rights treaty if compliance is impossible. What the ILO organs have done is to use the key elements of international treaty law concerning derogation to interpret how the rule of impossibility should be applied to the specific genre of human rights treaty which is within their competence. Is this a valid interpretation of international treaty law? Does it weaken international human rights standards?

27. In its classic form, the rule of impossibility requires material impossibility of compliance. During an emergency, situations can arise in which it is impossible to protect certain rights. If, for example, courts have ceased to function because courthouses have been destroyed and the judges killed or forced to flee the country, it may be materially impossible to respect the right to a prompt and fair trial. Derogation sets a lower threshold for absolving a State of responsibility for non-compliance with a treaty than impossibility. The type of emergency measures found to be valid in the Lawless and Ireland v. U.K. cases, for example, were not necessary in the sense of being the unavoidable result of force majeure. The suspected terrorists could have been left at large. Their detention was only necessary in the sense of the legal definition of necessity stated in Lawless: apt to overcome specific problems which form part of a grave and imminent threat to the life of the nation, yet carefully selected to have a lesser impact on human rights than other possible alternatives. In this sense, derogation is not necessary because it is no longer materially possible to protect certain human rights; it is necessary in order to protect the nation, or the State, or the ordre publique, without which there can be no protection of human rights. Derogation is, in the sense, preventive - although, of course, it is allowed only if the danger is both grave and imminent.

28. Human rights treaties protect a special kind of ordre publique, rather than reciprocal interests of States. Consequently, some provisions of the international law of treaties are not well suited to application to human rights treaties. There may be sound policy reasons to interpret the rule of impossibility in a somewhat different way as applied to human rights treaties, and the common treaty provisions on derogation would be an appropriate source for elements which could be used in fashioning a special version of this rule. An interpretation which would forbid States from taking exceptional measures to respond to a threat to the nation unless it becomes materially impossible to protect human rights would not be consistent with the object and purpose of

the treaty, that is, the protection of human rights. The doctrine of the Inter-American Court emphasizing the consequences of emergency measures on the rule of law and balance of powers is particularly relevant in this regard.

## III. DEROGATION IN CUSTOMARY INTERNATIONAL HUMAN RIGHTS LAW

### 1. Jurisprudence of the International Court of Justice and the implications of the draft code of crimes against the peace and security of mankind

29. In a series of decisions beginning with the 1947 Corfu Channel case and its Advisory Opinions on the International Status of South West Africa and on Reservations to the Genocide Convention, the International Court of Justice has recognized that some obligations regarding basic human rights are binding on all States. In its Advisory Opinion on Namibia, the Court declared that the denial of fundamental human rights constitutes a "flagrant violation of the purposes and principles of the Charter. 31/ In the Barcelona Traction case, it gave two examples of rights which have this status, the right to be free from slavery and from racial discrimination. 32/ In the Hostages in Teheran case, the Court declared that "Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the fundamental principles of the Charter of the United Nations as well as the fundamental principles enunciated in the Universal Declaration of Human Rights." 33/ The jurisprudence of the International Court of Justice thus identifies four rights which are non-derogable under customary law: freedom from slavery, from racial discrimination, from "wrongful" deprivation of liberty and from inhumane treatment while deprived of liberty.

30. International criminal law also sheds light on this question. There can be no justification for these most serious crimes, as a member of the International Law Commission stated: "Crimes against peace and humanity remain illicit regardless of the circumstances in which they have been committed." Although the draft code of crimes against the peace and security of mankind has not yet been adopted, it has advanced to the point where it is safe to draw certain inferences as to the rights which should be considered non-derogable because violations will be punishable under international law, regardless of the circumstances of their commission. According to this criteria, non-derogable rights include the right to life and to physical integrity, freedom from slavery and forced labour and freedom from "persecution" based on racial, religious, social, political or cultural motives. 34/

31. Jurists who have studied derogation agree unanimously that, as a minimum, the four rights which are non-derogable under the International Covenant, the European Convention and the American Convention also are non-derogable under customary law. 35/ These are the right to life, freedom from torture and cruel, inhuman or degrading treatment and punishment, freedom from slavery and freedom from retroactive application of criminal law. The draft code of crimes against the peace and security of mankind and the doctrine of the International Court support the conclusion that these four rights are non-derogable under customary law, assuming that detention or imprisonment as a result of retroactive application of new penal legislation is a form of "wrongful" deprivation of liberty.

2. Jurisprudence of the Inter-American Court of Human Rights and other sources of the non-derogability of habeas corpus and to due process

32. The Inter-American Court of Human Rights has declared that the right to challenge the legality of detention and most elements of due process are non-derogable because of their importance in preventing the violation of non-derogable rights, including the right to life and to physical integrity, and because of their role in preserving the rule of law, separation of powers and democracy. Subsequently, the Special Rapporteur on the right to a fair trial proposed that a draft protocol to the International Covenant on Civil and Political Rights be prepared in order to recognize the non-derogable status of these rights. 36/ The Human Rights Committee adopted a recommendation opposing the preparation of a draft protocol for this purpose, however, because it would imply that the said rights are derogable under existing law. 37/ With regard to the former, the Committee stated that it "is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency", implying that the right to challenge the legality of detention is non-derogable.

33. With regard to article 14 of the International Covenant on Civil and Political Rights, the Human Rights Committee indicated that it did not agree that all the provisions of that article could be considered non-derogable during an emergency. This explanation is ambiguous, but appears compatible with the position of the Inter-American Court in Advisory Opinion No. 9, which declares in general terms that most of the elements of due process are non-derogable. Support for the conclusion that the right to a fair trial is non-derogable can also be found in the Hostages in Iran case, which declared that "wrongful" deprivation of liberty violates customary international law, notwithstanding Iran's vague claim that exceptional circumstances should have been taken into account.

34. It is well established that all the guarantees of due process recognized in article 14 of the International Covenant must be respected in any case in which the death penalty is applicable, in order to preclude the possibility of an arbitrary deprivation of the non-derogable right to life. 38/ If both wrongful deprivation of liberty and arbitrary deprivation of life violate non-derogable rights, then the right of an accused to a fair trial with respect for all essential guarantees must also be non-derogable in all criminal matters. The next important step is to clarify the question of which are the derogable and non-derogable elements of the right to due process.

35. The argument that due process and access to the court are necessary in order to ensure that an emergency serves to preserve the rule of law rather than undermine it and to safeguard the democratic form of society, which weighed heavily in the Opinions of the Inter-American Court, is equally valid for international human rights law. Article 29 (2) of the Universal Declaration provides that no limitation may be imposed on human rights and freedoms unless it has the "sole purpose of securing the due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Derogation measures that weaken the role of the courts by

interfering with their independence, curtailing access to them or diluting the procedural rights which are essential to ensure fairness proceedings are incompatible with the requirements of a democratic society. 39/

36. Most studies on derogation point to only three elements of due process which could be considered derogable, in conformity with the principle of necessity: the right to be tried in public, without delay and "equality of arms" in the examination and presentation of witnesses. The Turku Declaration is more cautious, proposing a smaller list of due process guarantees modeled on those protected by the Geneva Conventions and Protocols. Since there is substantial authority for the position that the essential components of the right to a fair trial are non-derogable, it would be reasonable to begin the process of identifying the specific procedural guarantees which must be respected in all circumstances with those rights already protected by international humanitarian law, as proposed by the Turku Declaration.

### 3. Non-derogable standards concerning children and the family

37. The rule that children and pregnant women should not be subject to the death penalty is another that can be considered non-derogable. In treaties this rule is contained in the article on the right to life, and is therefore non-derogable as a treaty obligation. A decade ago the Inter-American Commission on Human Rights recognized the prohibition against applying capital punishment to children as a rule of customary international law, but declined to conclude all States were obliged to accept the age of 18 as defining the scope of application of this rule. 40/ Now, with the Convention on the Rights of the Child, which categorically prohibits the application of the death penalty to persons under the age of 18, having been ratified by 174 countries, it would seem impossible to conclude that the scope of application of this rule is still subject to debate. For many years the Special Rapporteur on summary, arbitrary and extrajudicial executions has cited this rule as being universally binding in his annual reports and correspondence with States. 41/

38. Without prejudice to the question of whether derogation from the Convention on the Rights of the Child is legally possible or not, other rights concerning the child and family also should be recognized as non-derogable. The basic principles that the child and family are entitled to protection - "special protection" in the case of the child - are first among them. The child's right to special protection is one of the oldest human rights, recognized in the "Declaration of Geneva" adopted by the League of Nations in 1924, and a Declaration on the Protection of Women and Children in Emergency and Armed Conflict was adopted by the General Assembly in 1974. 42/ Protection of the family should be accorded priority during emergencies because it is "the natural and fundamental group unit of society." 43/ International humanitarian law contains numerous provisions intended to protect the integrity and unity of the family and the special protection to which children are entitled during times of armed conflict, occupation and internal disturbances. Selected provisions of this law are reaffirmed in the Turku Declaration on Minimum Humanitarian Standards now before the Commission on Human Rights.

### 4. The "right to know"

39. One last right which should be recognized as non-derogable has been referred to as the "right to know" or the "right to truth". The Special Rapporteur on impunity and former Rapporteur on amnesty emphasized the importance of respecting this right in all circumstances. As a practical matter, the issue of whether persons who have been victims of human rights violations during an emergency or period of repression are entitled to a remedy usually comes to the fore after an emergency has terminated or democratic government has been restored. Yet in some cases, although the imminent danger to the nation has passed, Governments assert that the need to consolidate peace and order requires suspension of legal proceedings concerning human rights violations which occurred during the crisis. 44/

40. Strictly speaking, this does not raise a question of derogation once the crisis has passed, even assuming that the prerequisites for derogation might have been met during the crisis, because derogation requires a present or imminent threat to the nation. Nevertheless, the importance of respecting the "right to know" after return to normal conditions deserves to be mentioned. This right is closely linked to rights of the family and the right to a remedy. The Convention on the Rights of the Child expressly recognizes the right of children who have become separated from family members because of detention, imprisonment, exile or death in detention to information about the absent family member. 45/ The Human Rights Committee has declared that failure to inform a mother about the situation of an adult daughter who "disappeared" after being taken into custody not only violated her rights, but constituted psychological torture. 46/ The prohibition of torture is, of course, universally recognized as non-derogable. In a recent case, the Committee declared that, while a State may have discretion to amnesty or pardon officials accused of human rights violations, granting immunity from criminal responsibility may not be done in such a way as to prejudice the right of victims to pursue a civil remedy, nor does it relieve the State of its obligation to investigate responsibility for human rights violations under article 2 of the International Covenant. 47/ Article 2 sets forth the general obligations of States parties, and is not subject to derogation. The Inter-American Commission on Human Rights takes a stronger position, indicating the granting of immunity from criminal prosecution violates the rights of the victim. Its decisions concern countries which were not parties to applicable human rights treaties at the time the violations occurred. 48/ The existence of concurring jurisprudence in these systems and in the opinions of the pertinent United Nations rapporteurs evidences the existence of a rule of customary international law.

### 5. The rights of peoples and minorities

41. The right of peoples to self-determination, mentioned in Articles 1 and 55 of the Charter of the United Nations, is recognized by common article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as numerous resolutions of the General Assembly, notably the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. 49/ On the basis of an exhaustive study of the practice of States, Special Rapporteur Gros Espiell concluded that self-determination is a rule of jus cogens, defined by the Vienna Convention on the Law of Treaties as a peremptory norm of international law which is

binding on all members of the international community and from which no suspension is allowed. 50/ Derogation from the obligation to respect the right thus is not legally possible in any circumstance.

42. For many legal experts, the right to self-determination is a continuing right which includes the right to self-government in addition to the right to national independence. 51/ Viewed from this perspective, the status of self-determination as a peremptory rule of international law complements and reinforces the principle that all limitations on the enjoyment and exercise of human rights must be compatible with the needs of democracy. Without necessarily implying that the political rights of the individual are non-derogable, it is necessary to conclude that emergency measures which affect the basic institutions of democratic government are incompatible with customary international human rights standards binding on all nations, even during a state of emergency.

43. There is no clear and widely accepted definition of "people" in international law, but ethnic, cultural and linguistic factors play a part in defining what a people is. Not all ethnic, cultural and linguistic minorities are peoples, and the rights of minorities are different in crucial aspects from those of peoples; yet the rights of peoples and minorities are related concepts.

44. Genocide is defined as the commission of certain acts, including killing, causing serious bodily or mental harm, inflicting living conditions calculated to cause physical destruction, preventing reproduction and the forcible transfer of children, with the intention of "destroying, in whole or in part, a national, ethnic, racial or religious group". 52/ The prohibition of genocide benefits both peoples and minorities. It is the prototypical crime against humanity, and the right of persons belonging to national, ethnic, racial or religious groups to be free from genocide is unquestionably non-derogable.

45. Apart from the right to survival as a group, persons belonging to ethnic, religious and linguistic minorities have the right "in community with the other members of their group, to enjoy their culture, to profess and practise their own religion or use their own language". 53/ This right is a priori derogable under the International Covenant, which also appears to sanction some discrimination during grave threats to the life of the nation. 54/

46. Other sources suggest that discrimination violates international human rights standards in any circumstances, however. The International Court of Justice has declared that racial discrimination violates customary international standards, independently of any treaty obligations. 55/ Similarly, the draft code of crimes against the peace and security of mankind provides that "persecution" on the basis of racial, religious, social, political and cultural factors constitutes a crime against international law. The position of the International Court and the draft code suggest that, while the exigencies of a serious emergency may justify derogation from positive obligations to facilitate the enjoyment of rights by persons belonging to minorities, the right to be free from persecution based on minority status is non-derogable.

### 6. The evolving law of the Organization for Security and Co-operation in Europe on derogation from human rights standards

47. A recent development deserving special mention is the creation of standards and procedures concerning derogation in the Organization for Security and Co-operation in Europe. Resolutions adopted in 1990 and 1991 reaffirm the commitment of Member States to respect human rights, and provide for derogation from the duty to respect such rights only in conditions substantially identical to those set forth in the treaties mentioned above: grave threat to the nation, necessity of the emergency measures, the absence of discrimination and compliance with relevant domestic legal requirements as well as any applicable treaty obligations. 56/ The declaration provides that States may not derogate from the rights recognized as non-derogable by the applicable human rights treaties, adding an obligation "to endeavour" to maintain freedom of expression and information, in particular to allow the free circulation of information and ideas concerning the questions concerning human rights. Member States also have made procedural commitments, including the duty to provide other Member States with information concerning any emergency which is declared and its consequences.

48. This system thus provides an example of the role which can be played by regional supervisory mechanisms, in addition to contributing to the evolution of treaty-based standards on derogation into rules of customary law.

List of participants

| | |
|---|---|
| Philip Alston | (Chairman, Committee on Economic, Social and Cultural Rights) |
| Federico Andreu | (Colectivo de Abogados) |
| Alejandro Artucio | (International Commission of Jurists) |
| Laurence Boisson de Chazournes | (Faculty of Law, Geneva University) |
| Volodymyr Boutkevitch | (Subcommission on Prevention of Discrimination and Protection of Minorities) |
| Peter Duffy | (Barrister, Editor, European Human Rights Reports) |
| Hans Peter Gasser | (ICPC) |
| Victor Yves Ghébali | (University Institute of Higher International Studies) |
| Osman El Hajjé | (Subcommission on Prevention of Discrimination and Protection of Minorities) |
| Louis Joinet | (Subcommission on Prevention of Discrimination and Protection of Minorities) |
| Umesh V. Kadam | (National Law School of India) |
| Viviana Krsticevic | (Center for Justice and International Law, Washington) |
| Marie Françoise Lucker Babel | (Defense for Children International) |
| Daniel O'Donnell | (Rapporteur) |
| John Packer | (United Nations, Centre for Human Rights) |
| Denise Plattner | (ICRC) |
| François Rigaux | (Faculty of Law, University of Louvain, Belgium) |
| Ingeborg Schwarz | (Interparliamentary Union) |
| Isabelle Sherrer | (Amnesty International) |
| Wolfgang Strasser | (European Commission on Human Rights) |
| Julia Iliopoulos Strangas | (Committee against Torture) |
| Christian Tomuschat | (International Law Commission) |
| Liliana Valina | (Association for the Prevention of Torture) |
| Michel Veuthey | (ICRC) |
| Alfred de Zayas | (Centre for Human Rights) |
| Isabelle Oseredczuk | (CID) |

## Notes

1/ The Geneva Conventions of 1949, ICRC, Geneva, 1995. p. 24. Common art. 3 is so called because the identical text appears in all four of the Geneva Conventions.

2/ Ibid., art. 12, common to Conventions I and II, and art. 13 of Convention III.

3/ Ibid., art. 27.

4/ Ibid., art. 75 of Protocol I and arts. 5-6 of Protocol II.

5/ Art. 32 (2).

6/ International Labour Convention (No. 29). Art. 2.2 (d). Reproduced in Human Rights: A Compilation of International Instruments, United Nations document ST/HR/1/Rev.5 (Vol. 1, Part 1), at 217.

7/ Examples might include freedom of expression, assembly and movement, the right to be tried in public and without delay, and privacy of correspondence.

8/ The prohibition of discrimination is common to the International Covenant and American Convention, but is not found in article 15 of the European Convention.

9/ Art. 75, Protocol I, and arts. 5-6, Protocol II, Protocols Additional to the Geneva Conventions of 1949, ICRC, Geneva, 1995.

10/ Ibid., arts. 77-78, Protocol I and art. 4 (3), Protocol II.

11/ ECHR, Series B, 1960-1961, p. 131.

12/ ECHR, Series A, 1978, p. 119.

13/ Ibid., p. 104.

14/ Advisory Opinion OC 8/87, "Habeas Corpus in Emergency Situations" and Advisory Opinion OC 9/87, "Judicial Guarantees in States of Exception", Series A, Inter-American Court of Human Rights, San José, 1987.

15/ See, in particular, paras. 20, 24, 26 and 30.

16/ Paras. 30, and 38-40.

17/ Para. 27.

18/ Paras. 39-40.

19/ Para. 40.

20/ See for example No. 45/1979, Suárez de Guerrero v. Colombia and No. 64/1979, Salgar de Montejo v. Colombia, Report of the Human Rights Committee 1982, pp. 137 and 168. In one case, the Committee decided that measures taken during a state of emergency whose adverse effects on political rights extend beyond the emergency are incompatible with the Covenant. No. 34/1978, Landinelli Silva and others v. Uruguay, Report of the Human Rights Committee 1981, para. 8.4.

21/ E/CN.4/Sub.2/1982/15, para. 47.

22/ See the Siracusa Principles, adopted at a meeting of experts convened by the International Commission of Jurists and International Association of Penal Law in 1984 (Reprinted in Human Rights Quarterly, John Hopkins University Press, vol. 7, No. 1, Feb. 1985); the Paris Minimum Standards, adopted by the International Bar Association in 1985 (Report of the Sixty-First Conference at Paris, ILA, London, 1985, pp. 57-96) and the Geneva Guidelines for the Development of Legislation on States of Emergency, adopted at a meeting organized by the Association of International Consultants on Human Rights at the request of the Special Rapporteur on human rights and states of emergency (Reprinted in the 1991 report of the Special Rapporteur, E/CN.4/Sub.2/1991/28/Rev.1, annex I). In so far as other rights are concerned, the Paris Minimum Standards propose that the rights of ethnic, religious and linguistic minorities and the right to a remedy should be recognized non-derogable, and the Geneva Guidelines add the right to self-determination. The Turku Declaration includes the right to legal personality, freedom of thought and religion, the rights of the child, the right to honour, the right not to be compelled to leave one's own "territory", the right of families to remain together if displacement occurs, and the obligation to make "all efforts" to protect the rights of minorities and peoples among non-derogable norms (reproduced in E/CN.4/1995/116).

23/ Commission on Human Rights resolution 1995/29, 3 March 1995, adopted without a vote.

24/ Alston and Quinn. "The nature and scope of States parties obligations under the International Covenant on Economic, Social and Cultural Rights, Human Rights Quarterly, John Hopkins University Press, vol. 9, No. 2, May 1987, p. 217.

25/ Report of the Commission appointed under Article 26 of the Constitution of the International Labour Organization to examine the Complaints concerning the Observance by Greece of the Freedom of Association Conventions. International Labour Office, Official Bulletin 1971, para. 110.

26/ Report of the Commission appointed under Article 26 of the Constitution of the International Labour Organization to examine the Complaints concerning the Observance by Poland of the Freedom of Association Conventions. International Labour Office, Official Bulletin 1984.

27/ Alston, supra, note 24, p. 217.

28/ Vienna Convention on the Law of Treaties, art. 23.

29/ ICCPR, art. 4 (1); cf. ECHR art. 15 (1) and ACHR art. 27 (1).

30/ Art. 61.

31/ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 ICJ Reports 16.

32/ Barcelona Traction, Light and Power Company, Ltd., Judgment, 1970 ICJ Reports 32.

33/ United States Diplomatic and Consular Staff in Teheran, Judgement, ICJ Reports 1980, para. 91.

34/ Tomuschat would also include forcible population transfer, but other sources do not support attributing non-derogable status to freedom of movement and choice of residence.

35/ See e.g. the Questiaux report, Siracusa Principles, Paris Minimum Standards, Geneva Guidelines and Turku Declaration on Minimum Humanitarian Standards.

36/ E/CN.4/Sub.2/1994/24, para. 165 and annex I.

37/ Report of the Committee for 1994, A/48/40, annex XI, p. 120.

38/ For many years the Special Rapporteur on summary, arbitrary and extrajudicial executions has taken this position in his correspondence with States, which have not impugned the position that all States are obliged to respect all these guarantees in trials for capital offences. The position that all guarantees of due process must be respected in such trials also has been codified in the safeguards guaranteeing the protection of the rights of those facing the death penalty adopted by the Economic and Social Council in its resolution 1984/50.

39/ The principle that emergency measures may not undermine democracy and the separation of power is also a persuasive argument in favour of the proposition, endorsed by many meetings of international experts on derogation and by the declarations of the OSCE, that derogation measures should not infringe upon the essential role of the legislature.

40/ No. 3/87, Roach and Pinkerton v. the United States, para. 56, Report of the Inter-American Commission on Human Rights 1986-87, OAS, Washington.

41/ In his fifth report, the Special Rapporteur stated: "In view of the fact that the standards set forth in article 14 of the International Covenant ... are reflected in the overwhelming majority of national legislations, are referred to and accepted in numerous resolutions and

declarations of international bodies, and have been specifically accepted by a substantial majority of the international community through ratification of the Covenant, they have acquired the character of customary international law binding on all States whether or not they have ratified the Covenant." (E/CN.4/1987/20, para. 185). In his tenth report, the Special Rapporteur stated: "Over the past 10 years, the Special Rapporteur has sent letters or urgent appeals to over 100 States, many of which concern the application of the death penalty without full compliance with the standards set forth in the International Covenant on Civil and Political Rights ... Only two States have indicated that they did not consider themselves bound by these standards, and at least one such reply does not concern the guarantees set forth in article 14 but rather the minimum age for the applications of the death penalty. This is a further evidence that the guarantees contained in article 14 have become an accepted part of customary international law, in so far as capital punishment is concerned" (E/CN.4/1992/30, para. 610).

42/ General Assembly resolution 3318 (XXI), 14 December 1974.

43/ Universal Declaration, art. 16 (3); ICCPR, art. 23 (1).

44/ No. 322/1988, Rodriguez v. Uruguay, Report of the Human Rights Committee, 1994 (A/48/40).

45/ Art. 9 (4).

46/ No. 107/1981, Quinteros v. Uruguay, Report of the Human Rights Committee, 1983, p. 216.

47/ Rodriguez v. Uruguay, supra, paras. 12.3-12.4.

48/ Decisions Nos. 28/92 and 29/92, Inter-American Commission on Human Rights, Annual Report for 1992-93, Washington.

49/ General Assembly resolution 1514 (XV). Other declarations and resolutions are listed in The Right to Self-Determination: Implementation of United Nations Resolutions, H. Gros Espiell, 1980, E/CN.4/Sub.2/405/Rev.1, para. 48.

50/ Ibid., para. 70; Vienna Convention, art. 53.

51/ See, for example, The Right to Self-determination: Historical and Current Development on the Basis of UN Instruments, A. Cristescu, 1981; E/CN.4/Sub.2/404/Rev.1, para. 323.

52/ 1948 Convention on the Prevention and Punishment of the Crime of Genocide, art. II.

53/ International Covenant on Civil and Political Rights, art. 27.

54/ Art. 4 (1) stipulates that emergency measures may not discriminate "solely on the basis of race, colour, sex, language, religion or social origin".

55/ The Barcelona Traction Case, supra.

56/ Copenhagen Document, 1990, para. 25; Moscow Document, 1991, paras. 28.1-28.10.

## Annex II

## LIST OF REPLIES AND OTHER COMMUNICATIONS RECEIVED*

### A. Governments

| | |
|---|---|
| Bolivia | 5 May 1995 |
| Ireland | 2 June 1995 |
| Myanmar | 4 August 1994 |
| Russian Federation | 31 May, 20 June and 15 November 1994 |
| South Africa | 13 September 1994 |

### B. Non-governmental organizations

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|---|---|
| Amnesty International | April 1995 |
| Irish Council for Civil Liberties | 9 January and 9 March 1995 |

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* Since June 1994, when the seventh report (E/CN.4/Sub.2/1994/23) was issued.

## Annex III

LIST OF SPECIALIZED PUBLICATIONS RECEIVED FROM AMNESTY INTERNATIONAL

AFGHANISTAN - Incommunicado detention and "disappearances"
April 1994, AI INDEX: ASA 11/01/94

ALGERIA - Repression and violence must end
October 1994, AI INDEX: MDE 28/08/94

BOSNIA-HERZEGOVINA - Abuses in Bosnian Serb-controlled areas
June 1994, AI INDEX: EUR 63/11/94

BURUNDI - Time for international action to end a cycle of mass murder
May 1994, AI INDEX: AFR 16/08/94

CHINA - Human rights violations five years after Tiananmen
June 1994, AI INDEX: ASA 17/20/94

EGYPT - Human rights defenders under threat
September 1994, AI INDEX: MDE 12/15/94

INDIA - The Terrorist and Disruptive Activities (Prevention) Act: the lack of "scrupulous care"
November 1994, AI INDEX: ASA 20/39/94

INDIA - Torture and deaths in custody in Jammu and Kashmir
January 1995, AI INDEX: ASA 20/01/95

IRAQ - Human rights abuses in Iraqi Kurdistan since 1991
28 February 1995, AI INDEX: MDE 14/01/95

MALI - Ethnic conflict and killings of civilians
September 1994, AI INDEX: AFR 37/08/94

MOZAMBIQUE - Monitoring human rights - the task of UN police observers
June 1994, AI INDEX: AFR 41/03/94

NIGERIA - Military government clampdown on opposition
November 1994, AI INDEX: AFR 44/13/94

RWANDA - Mass murder by government supporters and troops in April and May 1994
May 1994, AI INDEX: AFR 47/11/94

SIERRA LEONE - Arrests of former government ministers
May 1994, AI INDEX: AFR 51/02/94

SOUTH AFRICA - Hostages to a right-wing agenda - Human rights violations against Bophuthatswana residents
March 1994, AI INDEX: AFR 53/10/94

SOUTH AFRICA - Securing the peace. Issues of justice and accountability in the wake of the Bophuthatswana uprising
March 1994, AI INDEX: AFR 53/20/94

SRI LANKA - New emergency regulations
January 1994, AI INDEX: ASA 37/04/94

SRI LANKA - Balancing human rights and security: abuse of arrest and detention powers in Colombo
February 1994, AI INDEX: ASA 37/10/94

SYRIA - Repression and impunity: The forgotten victims
April 1995, AI INDEX: MDE 24/02/95

TOGO - A new era for human rights?
September 1994, AI INDEX: AFR 57/02/94

TURKEY - More people "disappear" following detention
March 1994, AI INDEX: EUR 44/15/94

TURKEY - Selective protection: discriminatory treatment of non-European refugees and asylum-seekers
March 1994, AI INDEX: EUR 44/16/94

TURKEY - Dissident voices jailed again
June 1994, AI INDEX: EUR 44/45/94

TURKEY - Human rights defenders at risk
September 1994, AI INDEX: EUR 44/88/94

UGANDA - Recommendations for safeguarding human rights in the new constitution
August 1994, AI INDEX: AFR 59/03/94

UNITED STATES OF AMERICA/HAITI - The price of rejection - Human rights consequences for rejected Haitian asylum-seekers
May 1994, AI INDEX: AMR 51/31/94

YEMEN - Human rights concerns following recent armed conflict
September 1994, AI INDEX: MDE 31/06/94

ZAIRE - Appeal by Amnesty International to the new Prime Minister
September 1994, AI INDEX: AFR 62/03/94

THE 81ST INTERNATIONAL LABOUR CONFERENCE: Amnesty International's concerns relevant to the Committee on Application of Standards
April 1994, AI INDEX: IOR 42/01/94

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